

RULES OF  
PRACTICE AND  
PROCEDURE

POWER PLANT SITE  
CERTIFICATION

and

DESIGNATION OF  
TRANSMISSION  
CORRIDOR ZONES

**REGULATIONS**

July 2008  
CEC-140-2008-003



Arnold Schwarzenegger, Governor

# **CALIFORNIA ENERGY COMMISSION**

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**California Energy Commission**

**Regulations Pertaining to the**

**Rules of Practice and Procedure**

**Power Plant Site Certification**

**and**

**Designation of Transmission Corridor Zones**

**Title 20. California Code of Regulations**

**Chapter 1 (§§ 1001-1003)**

**Chapter 2 (§§ 1101-1237)**

**Chapter 5 (§§ 1701-2031)**

**Chapter 6 (§§ 2301, 2305, 2306, 2308, and 2320-2340)**

**Chapter 7 (§§ 2501-2557)**

**Current as of July 2008**

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## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 1. Construction of Regulations**

#### **§ 1001. Interpretation.**

The regulations in this chapter supplement the Warren-Alquist State Energy Resources Conservation and Development Act (Division 15 of the Public Resources Code).

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25213, Public Resources Code.

#### **§ 1002. Service on the Commission.**

Service of process may be made on the commission by personal service on the chairman, the executive director, or chief counsel, or as otherwise provided by law addressed as follows:

Energy Resources Conservation and Development Commission  
1516 Ninth Street  
Sacramento, CA 95814  
Attn: Chief Counsel

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25218(c), Public Resources Code.

#### **§ 1003. Computation of Time.**

The time in which any act provided by these regulations is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday as defined in Sections 10 and 12 of the Code of Civil Procedure and then such day is also excluded.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 10 and 12, Code of Civil Procedure.

## **CHAPTER 2. RULES OF PRACTICE AND PROCEDURE**

### **Article 1. Commission Meetings**

#### **§ 1101. Scope.**

This article only applies to meetings conducted under Public Resources Code Section 25214.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

## **§ 1102. Meetings – Scheduling.**

(a) The commission shall meet at least once every month.

(b) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairman. The chairman may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

## **§ 1103. Notice and Agenda.**

(a) Time and Distribution. Notices shall be given to all members, ex officio members, the public adviser, to all parties to proceedings on the agenda, and to all persons who request in writing such notice.

(b) Agenda. The agenda shall be prepared by the executive director and shall include any item proposed by any member, the public adviser or the executive director.

(c) Emergencies. In all public emergency cases, every member and ex officio member and the public adviser shall be notified in person, by telephone, or by telegram.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25214 and 25217(a), Public Resources Code; and Section 11125, Government Code.

## **§ 1104. Meetings.**

(a) Presiding Member. The chairman shall preside over all meetings of the commission at which he is present. In his or her absence, the vice chairman shall preside. If neither the chairman nor the vice chairman is in attendance, the member present who has the greatest seniority on the Commission shall preside. The presiding member may yield the chair.

(b) Robert's Rules of Order. Except as otherwise provided by this article and except when all the members present indicate otherwise, meetings of the commission shall be conducted pursuant to the latest edition of Robert's Rules of Order. Failure to comply with this subsection shall not invalidate any action of the commission.

(c) Order of Agenda. The presiding member may determine the order in which agenda items shall be considered.

(d) Consent Calendar. The agenda may include an item designated "the consent calendar."

(1) The consent calendar shall include only those matters for which there appears to be no controversy. The consent calendar shall contain any such matter specified for inclusion by the person proposing the agenda item. A brief description of each matter on the consent calendar shall be included in the agenda.

(2) At the request of any member, any matter shall be removed from the consent calendar and may be considered at the same meeting as a separate item of business.

(3) After an opportunity for the requests to remove matters from the consent calendar has been given, a vote shall be taken on the consent calendar. If three members vote to approve the consent calendar, each matter on the consent calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

(e) Public Comments. Any person may submit comments in writing on any agenda item. Any person submitting such comments shall, if possible, provide the commission with either twelve paper copies of such comments, or one paper copy and electronic copies in the number, media and format specified in Section 1209.5 in advance of the meeting at which it is to be considered.

Any person present and so desiring shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding members may limit or preclude such comments as necessary for the orderly conduct of business.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1105. Permanent Record.**

(a) The commission shall keep minutes of its meetings. Minutes shall be approved by the full commission and, upon approval, shall be signed by the chairman or other person designated by the chairman. Signed minutes shall be the original evidence of actions taken at any meeting, including the text of any resolutions adopted.

(b) Commission public meetings shall be recorded by stenographic reporter or electronic recording or both. The transcripts or recordings shall be kept at least one year and shall be available to the public for review at the commission's main office and such other offices as the commission may designate.

(c) Any person may photograph or record any public meeting of the commission so long as it does not disrupt the orderly conduct of business.

(d) Any person may petition the commission to correct a transcript of his own statements. Such petition shall be made within sixty days after the transcript has been made available to the public at the commission's main office. The commission shall consider any such petition as an item on the consent calendar pursuant to Section 1104(c) of these regulations.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

### **Article 2. General Provisions**

#### **§ 1200. Scope.**

Except as otherwise specifically indicated, the provisions of this article shall apply to all proceedings and hearings held before the commission or a committee thereof.

Note: Authority cited: Sections 25218(e) and 25218(f), Public Resources Code. Reference: Section 25214, Public Resources Code.

## **§ 1201. Definitions.**

The following definitions shall apply unless otherwise indicated:

(a) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

(b) "Respondent" means any person named in a complaint, pursuant to Section 1231 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission, and any person who is the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.

(c) "Complainant" means any person who files a complaint, pursuant to section 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(d) "Intervenor" means any person who has been granted leave to intervene pursuant to these regulations.

(e) "Party" means any applicant, respondent, complainant, or intervenor, and the staff of the commission.

(f) "Presiding member" means the chairman of the commission or any member of the commission designated to preside over any proceeding pursuant to Section 1204 of these regulations.

(g) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(h) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

(i) "Witness" means any person who offers testimony in any proceeding before the commission.

(j) "Docket Unit" means the Docket Unit of the Energy Resources Conservation and Development Commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

## **§ 1202. Right of Any Person to Comment.**

(a) Any person present and so desiring shall be given an opportunity to make oral comments on the subject matter of a proceeding; provided, however, that the presiding member may limit such comments as necessary for the orderly conduct of business. Except as otherwise provided, persons desiring to make oral comments are encouraged to notify the presiding member or the public adviser at least two (2) days prior to the hearing at which such comments are to be made.

(b) Any person desiring to submit written comments to the commission concerning the subject matter of a proceeding shall submit copies of such comments pursuant to Section 1209 of these regulations. Persons are encouraged to submit such comments at least five (5) days prior to the hearing, unless otherwise provided by order. Written comments shall be filed with the Docket Unit of the Energy Resources Conservation and Development Commission; provided, however, that during the actual conduct of a hearing, written comments may be filed with the presiding member.

COMMENT: The right to comment is not the limit of public participation in commission proceedings. For example, Section 1226 of these regulations provides the opportunity for persons to submit sworn testimony on specified issues in rulemaking and informational hearings, while Section 1227 provides a mechanism whereby persons interested in a proceeding may be permitted to ask or answer additional questions either orally or in writing. In addition, in those proceedings requiring greater formality, and in all adjudicatory proceedings, the commission permits intervention in the proceeding.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

### **§ 1203. Powers of the Chairman.**

In addition to all other powers conferred by this article, the chairman or presiding member designated pursuant to Section 1204 shall have the power to:

(a) Request and secure such information as is relevant and necessary in carrying out the purposes of the proceeding.

(b) Issue subpoenas and subpoenas duces tecum at the direction of the commission, on his motion or upon application of any party. The application of a party shall be supported by a declaration of good cause.

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, admitting or excluding evidence, receiving exhibits, designating the order of appearance of persons making oral comments or testimony, and continuing the hearings.

(d) Set the time and place of hearings.

(e) Cancel a scheduled hearing or meeting. To the extent feasible, notice shall be given of any cancellation and the staff in consultation with the public adviser shall inform known interested participants by the most expeditious means possible.

(f) For good cause shown, and upon proper notice, shorten or lengthen the time required for compliance with any provision of these regulations.

Note: Authority cited: Sections 25213 and 25539, Public Resources Code. Reference: Section 25210, Public Resources Code.

#### **§ 1204. Designation of Committees and Presiding Member; Quorum.**

(a) Committees shall be designated in accordance with Public Resources Section 25211. During committee proceedings a presiding member shall exercise the powers and duties conferred on the chairman by this article.

(b) A quorum of a committee is one member.

(c) The commission may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission.

(d) If a presiding member is unavailable during any portion of the proceedings, he may delegate his responsibilities to the second member of the committee.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

#### **§ 1205. Designation of Hearing Officer; Responsibilities.**

The chairman may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The Commission may authorize a hearing officer to preside over proceedings held pursuant to this Division, except for site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, Biennial Report proceedings, and rulemaking proceedings. In site certification proceedings pursuant to Chapter 5, Articles 1 through 5, of these regulations, a hearing officer may take evidence in the temporary absence of a Commission member as provided in Public Resources Code section 25211.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25211 and 25217, Public Resources Code.

#### **§ 1206. Representatives.**

Any person may designate any other person, except those prohibited by Section 25205(d), Public Resources Code, to represent him or her for any purpose under this subchapter.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25205(d), Public Resources Code.

#### **§ 1207. Intervenors.**

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of

this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1208. Conferences; Purpose; Notice; Order.**

The presiding member or hearing officer may hold a conference with the parties, the public adviser, the chief counsel, and any other persons interested in the proceeding, at any time he deems necessary, for the purpose of formulating the issues, organizing the questioning of witnesses, determining the number of witnesses, providing for the exchange of exhibits or prepared statements, and such other matters as may expedite the orderly conduct of the proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

(a) The conference shall be publicly noticed and the notice served in person or by mail on all parties at least ten (10) days before the conference.

(b) The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accept stipulations of law or fact.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1209. Form of Submissions.**

(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely



and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.

(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:

- (1) the title of the proceedings before the commission;
- (2) the docket number, if any, assigned by the commission;
- (3) the nature of the material;
- (4) the name, address, and telephone number of the person submitting the material.

(c) Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding before the commission shall provide twelve (12) paper copies thereof, including one original paper copy. The Docket Unit shall photocopy and distribute submitted material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.

(d) Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.

(e) Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit.

(f) Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 1210.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

#### **§ 1209.5. Electronic Filing.**

(a) Electronic documents may be submitted in any of the following media in the number of copies specified:

- (1) Two CD-ROMs (read only);
- (2) Two magnetic diskettes;
- (3) One internet e-mail; or
- (4) Any other media and number of copies authorized by the Executive Director.

(b) The format version used must be noted on the media. Charts, graphs, drawings, maps, and photographs should be incorporated within the document, but may be included in an appendix. Maps and photographs may be submitted as paper copies in the number specified by the executive director.

(c) Electronic documents shall be provided in the Portable Document Format (PDF), or its equivalent, as determined by the executive director.

(1) The executive director may waive the format requirement if it is shown to constitute an undue burden on the submitter of a document. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a document. The request shall include a description of each such document and a discussion of the reasons why the format specified in (c) above is an undue burden. The requesting party may not file the electronic document while such a request is pending. If a request is granted, the executive director shall specify the format allowed. The executive director shall act on all such requests within 15 days.

(d) Documents shall be delivered to the Dockets Unit in one of the following ways:

(1) by personal delivery to the Dockets Unit;

(2) by electronic transfer (e-mail) of smaller documents (5MB maximum file size) to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us);

(3) by first class mail, or other equivalent delivery service, with postage prepaid; or

(4) in any other delivery method approved by the Executive Director.

(e) Data the submitter considers confidential must be filed as a separate document with an application for confidential designation pursuant to Section 2505.

NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

#### **§ 1210. Filing by Parties.**

(a) Unless otherwise provided by the presiding member, a paper copy of all written material filed by any party in a proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid, on every other party to the proceeding, except where a party requests an electronic copy when available. Any party so requesting shall be served with an electronic copy in a manner pursuant to section 1209.5 regarding electronic filings.

(b) The Docket Unit shall promulgate and make available a list which shall include the names and addresses of all parties to a proceeding.

(c) Any filing by a party shall include a proof of service in compliance with subsection (a) of this section.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

### **§ 1211. Submission of Exhibits; Filing.**

Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member, filed with the Docket Unit at any time before the close of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

### **§ 1212. Rules of Evidence.**

The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) Oral or written testimony offered by any party shall be under oath.

(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

### **§ 1213. Official Notice.**

During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

#### **§ 1214. Record and Transcript.**

The presiding member shall cause a formal record of the proceedings to be made. The record shall consist of the official minutes or a transcript of each hearing or conference held during the proceedings, all pleadings, written testimony, and briefs submitted by any party, any order entered pursuant to Section 1208(b), all questions and answers of witnesses submitted pursuant to Section 1225, any exhibits accepted into the record pursuant to Section 1211, any written comments submitted pursuant to Section 1202(b), and the record of all ex parte contacts filed pursuant to Section 1216 of these regulations, together with such other items as the presiding member may direct. The presiding member may cause a transcript of any conference held pursuant to Section 1208 to be made and entered into the record.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code

#### **§ 1215. Interlocutory Orders and Appeals.**

(a) During proceedings before a committee, a party may request that a ruling of the committee or presiding member be issued in the form of a written order. Any such request shall be made no later than five calendar days following the ruling.

(b) Any party may petition the full commission to review any order prepared pursuant to subsection (a) of this section. Any such petition shall be filed within ten days of the date of the order being issued; provided, however, that rulings of the presiding member or committee may not be appealed during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instances, the matter shall be referred forthwith by the presiding member to the commission for determination.

(c) Unless the commission acts upon questions referred by the presiding member to the commission or upon a petition to review an order of the presiding member or committee within thirty (30) days after the referral or filing of the petition, whichever is later, such referrals or petitions shall be deemed to have been denied. The commission may act by formally denying the petition or by vacating or amending the committee order.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

#### **§ 1216. Ex Parte Contacts.**

(a) The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission. For purposes of this section "presiding officer" means all commissioners and all hearing advisors.

(b) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11430.10 – 11430.80, Government Code, Section 25210, Public Resources Code.

### **§ 1217. Informal Hearings.**

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10 – 11455.60, Government Code, Section 25210, Public Resources Code.

## **Article 3. Rulemaking and Informational Hearings**

### **§ 1220. Scope.**

(a) "Rulemaking proceedings" shall include any hearings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application, which implements, interprets or makes specific any provision of Division 15 of the Public Resources Code or any other statute enforced or administered by the commission.

(b) "Informational proceedings" shall include any hearings designed to gather and assess information to assist the commission in formulating policies; informing the public of commission actions; or obtaining public comment and opinion.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

### **§ 1221. Petitions.**

(a) Any person may petition the commission to request rulemaking hearings. Such petition shall include:

- (1) the name, address, and telephone number of the petitioner;
- (2) the substance or nature of the regulation, amendment, or repeal requested;
- (3) the reasons for the request;
- (4) reference to the authority of the commission to take the action requested.

(b) Such petition shall be filed with the executive director who shall within seven (7) days after its filing determine whether the petition contains the information specified in subsection (a).

(1) If the executive director determines that the petition is complete, he or she shall so certify in writing and shall inform the petitioner.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner accompanied by a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(c) Upon certification by the executive director, the commission shall, within thirty (30) days from the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing the staff to prepare an appropriate order pursuant to section 1222 of these regulations.

(d) Nothing in this section shall operate to limit the opportunity of any member of the public to be heard at commission meetings and hearings, as provided by section 25214 of the Public Resources Code.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11347 and 11347.1, Government Code.

#### **§ 1222. Commission Orders.**

(a) The commission may, upon its own motion or upon granting a petition filed pursuant to section 1221 of these regulations, adopt an order to institute a rulemaking proceeding in accordance with the procedures of Sections 11346.4, 11346.5 11346.7, and 11346.8 of the Government Code.

(b) The commission may, upon its own motion, adopt an order to institute an informational proceeding. The order shall include:

(1) the date of the first hearing;

(2) a statement indicating whether the commission or a committee thereof will hold additional hearings on the matter;

(3) a statement of the authority pursuant to which the hearing is ordered, and a reference to any code sections or other provisions of law pursuant to which the information is to be gathered or disseminated;

(4) a statement of the nature and purpose of the proceedings;

(5) a statement requiring the presence and participation of such persons as the commission may direct, consistent with the nature and purpose of the proceedings.

(c) In addition to the requirements of subsections (a) and (b) of this section, every order instituting hearings pursuant to this section shall contain:

(1) a statement informing members of the public of the function and availability of the public adviser;

(2) a statement indicating the time during which written comments will be received, and the manner by which such comments shall be filed;

(3) a statement that any person may make oral comments on the subject of the proceeding;

(4) a statement setting forth additional procedures deemed necessary by the commission and not inconsistent with these regulations. Such procedures may include one or more provisions contained in section 1212 of these regulations.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25210 and 25214, Public Resources Code.

**§ 1223. Notice.**

(a) Notice of a rulemaking proceeding shall be given in accordance with Government Code Section 11346.4.

(b) At least fourteen (14) days prior to the first hearing in an informational proceeding ordered pursuant to Section 1222(b), the executive director shall cause notice of the hearing to be mailed to every person who requested such notice in writing, to every person requested to participate in such proceedings, and to any person who the executive director, in conjunction with the public adviser, determines to be concerned with the subject matter of the proceeding.

(c) In addition to the requirements of subsections (a) and (b) of this section, notice of additional hearings shall be required at least ten (10) days prior to the commencement of such hearings.

(d) Nothing in this section shall preclude the commission from publishing notice in such additional forms or media as the executive director, in conjunction with the public adviser, may prescribe.

(e) A copy of the order adopted pursuant to Section 1222 of these regulations shall accompany the initial notice prepared and mailed pursuant to this section, unless a copy of the order has been previously mailed to those persons who would receive such notice.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1224. Use of Testimony.**

(a) The commission, or a committee thereof, may require by order instituting hearings, prehearing conference order, or other proper notice that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.

(b) The presiding member may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

**§ 1225. Questioning.**

(a) Questions from commissioners or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement; provided, however, that persons not submitting sworn testimony shall not be compelled to answer such additional questions without their consent.

(b) The presiding member may, at his discretion, limit the time and scope of oral questioning.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **Article 4. Complaints and Investigations**

##### **§ 1230. Scope.**

(a) Complaint proceedings shall include any adjudicatory proceeding in which the commission determines whether to sanction, or take other appropriate action against, a person for an alleged violation of any statute, order, decision, or regulation adopted, administered, or enforced by the commission, including but not limited to a proceeding pursuant to Public Resources Code section 25534.1. Investigation proceedings shall include any adjudicatory proceeding in which the commission determines the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission. A single proceeding may involve both a complaint and an investigation.

(b) Standing committees to exercise the complaint or investigatory functions of the commission may be established pursuant to Section 1204(a). The order establishing a committee shall designate the area of commission jurisdiction over which a committee shall exercise the complaint or investigatory function.

Note: Authority cited: Sections 25213, 25218(e), and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 25534.1, 25900, 25967, and 25983, Public Resources Code.

##### **§ 1231. Complaints and Requests for Investigation; Filing.**

Any person, including but not limited to the commission staff or the owner or operator of a power plant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

(a) A complaint or request for investigation shall be filed with the General Counsel of the commission.

(b) The complaint or request for investigation shall include:

(1) the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);

(2) the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person owning or operating, or



proposing to own or operate, the project which is the subject of the request for investigation (respondent);

(3) a statement of the facts upon which the complaint or request for investigation is based;

(4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;

(5) the action the complainant or petitioner desires the commission to take;

(6) the authority under which the commission may take the action requested; and

(7) a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought.

(8) a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(a), 25362(b), 25500, 25534, 25900, 25967 and 25983, Public Resources Code.

### **§ 1232. Hearing and Notice Procedures.**

(a) Within 30 days after the receipt by the General Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:

(1) dismiss the matter upon a determination of insufficiency or lack of merit of the pleadings, specifying whether the dismissal is with or without prejudice; or

(2) serve the complaint or request for investigation upon the respondent and all other persons identified in Section 1231(b)(7) and schedule a hearing upon the complaint or request for investigation. The hearing shall be scheduled to commence within 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, the committee, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) Notice, by certified mail, return receipt requested, of complaint or investigatory proceedings shall be given to all petitioners, respondents and persons identified in Section 1231(b)(7) no fewer than 21 days before the first hearing on the matter. In addition, the committee, or if none has been assigned the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision.

(c) The notice shall contain:

- (1) the names and addresses of all named complainants, petitioners, and respondents;
- (2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;
- (3) an explanation of the action the commission may take;
- (4) the date, place, and time of any hearing in the matter; and
- (5) a statement concerning the availability of the public adviser.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(a), 25362(b), 25500, 25534, 25900, 25967 and 25983, Public Resources Code.

### **§ 1233. Answers to Complaints and Requests for Investigation.**

(a) The respondent shall file and serve an answer with the complainant or petitioner, the commission, and all persons identified in Section 1231(b)(7) or 1232(b) within 30 days after service of the complaint or request for investigation pursuant to Section 1232(a)(2).

(b) The answer shall include:

- (1) an admission or denial of each material allegation;
- (2) an explanation of any defenses raised by the respondent; and
- (3) a declaration as provided in Section 1231(b)(8).

(c) Where the petitioner seeks clarification of the jurisdictional status of its own project, no answer shall be required.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(a), 25362(b), 25451, 25452, 25500, 25534, 25900, 25967 and 25983, Public Resources Code.

### **§ 1234. Proposed Decision.**

(a) If the matter is heard before an assigned committee or hearing officer, appointed pursuant to Section 1205, the committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision.

(b) To the extent reasonably possible, the proposed decision shall be made available within 14 days following the close of hearings held pursuant to Section 1232.

(c) The proposed decision shall contain an explanation and analysis of the facts and issues involved in the case, and recommendations for disposition by the full commission. The committee or hearing officer shall serve a copy of the proposed decision upon all parties to the hearings on the matter and shall schedule the matter for consideration by the full commission at

the earliest reasonable date, but in no event sooner than 10 days after service of the proposed decision.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

#### **§ 1235. Public Participation and Intervention.**

To the extent deemed relevant by the presiding member, any person may testify or comment during a complaint or investigatory hearing. A person may become a formal party by intervening pursuant to Section 1207.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1236. Commission Decision.**

(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall:

- (1) adopt, modify, or reject the proposed decision; or
- (2) remand the matter to the committee or hearing officer for further hearings; or
- (3) reopen the evidentiary record and itself conduct further hearings.

(b) When considering a proposed decision from a committee or hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.

#### **§ 1237. Post-Certification Complaints.**

(a) Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:

- (1) the name, address, and telephone number of the person filing the complaint (complainant);
- (2) the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the complaint;
- (3) a statement of facts upon which the complaint is based;
- (4) a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;

(5) the action the complainant desires the commission to take;

(6) the authority under which the commission may take the action requested, if known;

and

(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.

(b) Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned, setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.

(c) If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).

(d) Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.

(e) Within 30 days after issuance of the staff report, the committee shall:

(1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;

(2) issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or

(3) conduct hearings to further investigate the matter and then issue a written decision.

(f) If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code.  
Reference: Section 11180, Government Code; and Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resources Code.

## **CHAPTER 5. SITE CERTIFICATION**

### **Article 1. General Provisions Applicable to Notices and Applications**

#### **A. Scope and Definitions**

##### **§ 1701. Scope of Regulations.**

(a) Unless otherwise stated, the provisions of Article 1 of this chapter shall apply to the consideration of all notices and applications for any site and related facility within the jurisdiction of this commission.

(b) The provisions of Article 2 of this chapter shall apply to the consideration of all notices except as provided in Article 4.

(c) The provisions of Article 3 of this chapter shall apply to the consideration of all applications for certification except as provided in Article 4.

(d) The provisions of Article 4 of this chapter shall apply to the consideration of all geothermal notices and applications for certification.

(e) The provisions of Article 5 of this chapter shall apply to the consideration of all applications for a Small Power Plant Exemption.

(f) The provisions of Article G of this chapter shall apply to the consideration of all powerplant and transmission line jurisdictional determinations.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25541.5, Public Resources Code.

##### **§ 1702. Definitions.**

For purposes of this subchapter and unless otherwise indicated, definitions found in Public Resources Code Section 25100 as well as the following definitions shall apply:

(a) "Administrative record" means all materials that have been entered into the docket of the proceeding. The administrative record includes, but is not limited to, the hearing record (as defined below).

(b) "CEQA" means the California Environmental Quality Act of 1970 commencing with Section 21000 of the Public Resources Code.

(c) Chief Counsel means the Chief Counsel of the commission.

(d) "Committee" means the committee of the commission appointed pursuant to Section 1204 of these regulations to conduct proceedings on a notice or application.

(e) "Environmental documents" means draft environmental impact reports (draft EIR), final environmental impact reports (final EIR), initial studies, negative declarations, notices of preparation, notices of determination, notices of exemption and statements of findings and

overriding considerations, and the documentation prepared by the Commission or its Staff for a certified regulatory program in compliance with Section 21080.5 of the Public Resources Code.

(f) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(g) "Hearing officer" means any person designated pursuant to Section 1205 of these regulations to assist the presiding member in conducting the proceeding.

(h) "Hearing record" means the materials that the committee or commission accepts at a hearing. While the committee or commission may rely in part on any portion of the hearing record in making a finding, only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a finding of fact. The hearing record includes:

(1) written and oral testimony presented at a hearing including direct and cross-examination of a witness;

(2) supporting documentary evidence submitted with testimony;

(3) public comment offered at a hearing or entered into the record at a hearing;

(4) public agency comment offered at a hearing or entered into the record of a hearing;

(5) matters of which official notice has been taken.

(6 ) other evidence that the committee accepts at a hearing.

(i) "Intervenor" means any person who has been granted leave to intervene in notice or application proceedings pursuant to Section 1712 of these regulations.

(j) "Party" means the applicant, the staff of the commission, and any intervenor.

(k) "Presiding member" means the presiding member of the committee appointed to conduct proceedings on a notice or application.

(l) "Filing" means submission of any document to the commission docket. A document is filed on the day it is received by the commission docket.

(m) "Acceptance" means a formal determination by the commission, pursuant to Public Resources Code, sections 25516.6, 25522, or 25540.1 that a notice or application for certification is complete.

(n) "Related Facility" means a thermal powerplant, electric transmission line, or any equipment, structure, or accessory dedicated to and essential to the operation of the thermal powerplant or electric transmission line. These facilities include, but are not limited to, transmission and fuel lines up to the first point of interconnection, water intake and discharge structures and equipment, access roads, storage sites, switchyards, and waste disposal sites. Exploratory, development, and production wells, resource conveyance lines, and other related equipment used in conjunction with a geothermal exploratory project or geothermal field

development project, and, absent unusual and compelling circumstances, the thermal host of a cogeneration facility, are not related facilities.

(o) "Application" means either an Application for Certification or an application for a Small Power Plant Exemption, unless otherwise indicated.

(p) "Local agency" means any local or regional governmental authority within the state, including but not limited to, any city, county, air pollution control or air quality management district, or Native American government.

(q) "Areas of critical concern" means special or unique habitats or biological communities that need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area, or by educational institutions, museums, biological societies, or special interest groups with specific knowledge of resources within the project area. This category includes, but is not limited to, wildlife refuges, wetlands, thermal springs, endangered species habitats, and areas recognized by the California Natural Area Coordinating Council and the Governor's Office of Planning and Research.

(r) "Performance criteria" means performance goals for which the applicant proposes to design the facilities.

(s) "MCE" means Maximum Credible Earthquake as defined by the United States Geological Survey.

(t) "MPE" means Maximum Probable Earthquake as defined by the United States Geological Survey.

(u) "Impact area" means the area which is potentially affected by the construction, modification, or operation of a site and related facilities.

(v) "Species of special concern" means candidate rare, threatened, or endangered species that may need protection from potential adverse effects resulting from project development and which may be identified by local, state, or federal agencies with resource responsibility within the project area or by educational institutions, museums, biological societies, and special interest groups with specific knowledge of resources within the project area. In addition to species designated pursuant to state or federal law, this category includes, but is not limited to, those rare and endangered plant species recognized by the Smithsonian Institution or the California Native Plant Society.

NOTE: Authority cited: Sections 25213, 25218(e), 25541.5, Public Resources Code. Reference: Sections 21061.1, 25502, 25519, 25540, 25540.1, 25540.2, and 25541.5, Public Resources Code; and Title 14, California Code of Regulations, Section 15364.

## **B. Filing and Information Requirements for Notices and Applications**

### **§ 1704. Information Requirements for Notices and Applications.**

(a) General Requirements. All notices and applications shall conform to the following requirements:

(1) Except where otherwise indicated, any descriptions, statements, analyses, and discussions required in the notice or application shall extend to the site and related facilities.

(2) An applicant may incorporate by reference any information developed or submitted in any previous commission proceeding, provided that the notice or application contains a summary of the referenced material, identifies the proceeding in which it was submitted, and explains the relevance of the material to the information requirement. To the extent possible, the applicant should rely on findings, conclusions, analyses, policies, and other guidelines adopted or established in the most recent Biennial Report in order to satisfy the information requirements.

(3) The notice or application shall include or reference the following:

(A) Descriptions of all significant assumptions, methodologies, and computational methods used in arriving at conclusions in the document;

(B) Descriptions, including methodologies and findings, of all major studies or research efforts undertaken and relied upon to provide information for the document; and a description of ongoing research of significance to the project (including expected completion dates); and

(C) A list of all literature relied upon or referenced in the document, along with brief discussions of the relevance of each such reference.

(4) Each principal subject area covered in a notice or application shall be set forth in a separate chapter or section, each of which shall identify the person or persons responsible for its preparation.

(b) The informational requirements for notices, applications for certification, and applications for a small powerplant exemption are contained in this section and in appendices to this Chapter. Maps required in this section and in the appendices shall be provided at the scale specified in the appendices, except that applicants may provide maps at a different scale if the maps are legible and if a written explanation of why this different scale is more appropriate is included in the notice or application. The term region means a geographic area that is normally contiguous and exhibits similar geographic characteristics. The term vicinity means both that area in close proximity to the project site and which receives a preponderance of the direct impacts of the project. The area referred to by the terms vicinity and region will overlap, although, in most circumstances, the vicinity will be part of the region. The size of the region and vicinity that should be discussed in the filing will vary depending on the project's location (e.g., rural, urban, coastal), its technology (e.g., nuclear, coal, geothermal), and by technical area. Applicants should use their professional judgment in determining the appropriate size of the region and vicinity to be discussed in the application. A statement explaining the extent of the area described for each technical area shall be included.



(1) The notice of intention shall contain all the information specified in Appendix A to this chapter for a nongeothermal site and related facilities, and Appendix C for a geothermal site and related facilities.

(2) The application for certification shall contain all information specified by Appendix B of this chapter and the commission decision approving the notice, if any.

(3) Except where otherwise indicated, any descriptions, statements, analyses, and discussions required in a geothermal notice or application shall extend to the geothermal power plant and associated geothermal field, including, but not limited to, wells that supply the power plant or re-inject geothermal fluids, resource conveyance lines, major access roads, storage sites, switchyards, waste disposal sites, and all other structures or improvements which are related to the power plant. Information and data concerning the associated geothermal field are required to the extent that they relate to the environmental impacts of the entire project or to the reliability of the proposed power plant. Absent new information or changed circumstances, incorporation of environmental impact reports on the geothermal field will fulfill the requirements for field information.

(4) Where required information on any aspect of the proposed geothermal power plant is unavailable, the geothermal notice may contain typical operating data or projections representative of the size and type of the facilities proposed, together with a discussion of the applicability of the data to the proposed facilities, an identification of limitations inherent in the representative data, an explanation for the unavailability of the required information, and an estimate of when such information will be available. The substitution of representative or projected information for the information requested in Appendix C is intended to allow and encourage the filing of a notice prior to the discovery or confirmation of commercial resources.

(5) The application for small powerplant exemption shall contain all the information specified by Appendix F.

(c) Information requirements for applications. The application for certification shall contain all the information required by Appendix B of this article (for nongeothermal projects) or Appendices B or C of Article 4 (for geothermal projects) and any information required by the decision on the notice (see Section 1805, Article 4 for geothermal requirements).

Note: Authority cited: Sections 25213, 25216.5(a), 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.5, 25308.5, 25504, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, 25540.6, 25541, Public Resources Code.

#### **§ 1705. Form of Submissions.**

Paper copies of notices and applications, ad any other documents attached thereto, submitted pursuant to this article, shall conform to the requirements of Section 1209 of these regulations and shall be submitted in a three-ring binder in a loose-leaf fashion, with pages numbered by chapter.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.

#### **§ 1706. Number of Copies.**

(a) The applicant shall file with the commission one hundred fifty (150) copies of any notice and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the notice or, alternatively, 100 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.

(b) The applicant shall file with the commission one hundred twenty-five (125) copies of any application for certification and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 50 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise specified by the Executive Director for the convenience of interested agencies, the parties, and the public.

(c) The applicant shall file with the commission one hundred (100) copies of any application for a small powerplant exemption and of all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application or, alternatively, 75 paper copies and 25 copies in a CD-ROM medium and the format specified in Section 1209.5, unless otherwise required by the Executive Director for the convenience of interested agencies, the parties, and the public.

(d) The applicant shall also file the same number of copies, specified in subsection (a) or (b) above, of any subsequent documents required by the Commission for completeness under section 1709.

(e) In addition to the materials filed pursuant to subsection (a), (b), or (c) above, the applicant shall file five (5) copies of all documents cited in the notice or application which are not available at public libraries or other governmental agencies in the City or County of Sacramento. For each document which is so available, the filing shall state where the document can be found.

(f) The executive director may waive the requirement for filing the number of copies specified by this section for any document for which reproduction and filing of that number of copies would constitute an unreasonable burden to the applicant. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a notice or application. The request shall include a description of each such document and a discussion of the reasons why reproduction and filing of that number of copies is unreasonable. An applicant may not file a notice or application while such request is pending. If a request is granted, the executive director shall specify the number of copies of the document to be filed. The executive director shall act on all such requests within 15 days.

(g) Upon filing a notice or application pursuant to this article, the executive director may require the filing of additional copies of the notice or application and associated documents, if necessary, to satisfy the requirements of interested agencies, the parties, and the public.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25519, Public Resources Code.

#### **§ 1707. Authority and Verification.**

Every notice and application shall be dated and signed by each applicant attesting under penalty of perjury to the truth and accuracy of such notice or application. If any of the applicants are corporations or business associations, the notice or application shall be dated, signed, and attested to by an officer thereof. Where a notice or application is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the notice or application; provided, however, that no more than one member of said joint venture or proposed joint venture need attest as to the entire notice or application, but that each joint venturer or proposed joint venturer shall attest to the notice or application with respect to the information required by Section 1704 regarding need for the project and financial impacts of the proposal.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502 and 25520, Public Resources Code.

#### **§ 1708. Application, Compliance, and Reimbursement Fees.**

(a) A cashier's check or wire transfer in the amount required by subsections (c) and (d) shall accompany the filing of the notice.

(b) Upon the demand of the executive director, the applicant shall pay additional fees to the commission in the amount of any reimbursement made to local agencies by the commission pursuant to Section 1715 of this article.

(c) A cashier's check or wire transfer for \$100,000 plus \$250 per megawatt (MW) of generating capacity shall accompany the filing of an Application for Certification (AFC). Generating capacity shall be determined in accordance with Section 2003 (a).

(d) The owner of each facility granted certification shall submit a cashier's check or wire transfer for \$15,000 annually. The first payment of the annual fee shall be due on the date the Commission adopts the final decision for the facility. Subsequent payments shall be paid on July 1 of each year in which the facility retains its certification.

(e) The fees specified in (c) and (d) shall be adjusted annually to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce.

(f) A project which use a renewable resource as its primary fuel or power source is exempt from the filing and compliance fees identified in (c) and (d).

(g) Fees paid pursuant to this section are non-refundable. Additional fees may be required in the event an amendment to the AFC increases the Gross generating capacity identified in (c).

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25538, 25802 and 25806, Public Resources Code.

## **§ 1709. Filing of Notices and Applications for Certification; Data Adequacy Review and Docketing.**

(a) Upon the filing of any notice or application for certification, all documentation shall be reviewed by the executive director or a delegatee to determine whether the notice or application for certification contains the information required under section 1704 and is therefore complete. The executive director or a delegatee shall take into consideration the timely comments of the Air Resources Board, local air pollution control districts, other agencies, and members of the public prior to the determination of whether the notice or application for certification contains the information required under section 1704 and is therefore complete.

(b) No later than 30 days after the receipt of a non-geothermal notice or application and no later than 20 days after receipt of a geothermal notice or application for certification, the executive director shall file his or her recommendation on whether the notice or application for certification contains the information required under section 1704 and is therefore complete.

(c) No later than 45 days after receipt of a nongeothermal notice or application for certification, and no later than 30 days after receipt of a geothermal notice or application for certification, the commission shall act upon the executive director's recommendation as to whether the notice or application for certification contains the information specified in Section 1704 and is therefore complete. If the commission determines that the notice or application for certification is complete, the notice or application for certification shall be deemed accepted for the purpose of this section on the date that this determination is made. If the commission determines that the notice or application for certification is incomplete, the commission shall indicate, in writing, those parts of the notice or application for certification which fail to meet the information requirements and the manner in which it can be made complete.

(d) If the applicant files additional data to complete the notice or application for certification, the commission shall determine, within 30 days of the receipt of that data, whether the data is sufficient to make the notice or application for certification complete. The notice or application for certification shall be deemed filed on the date when the commission determines the notice or application for certification is complete if the commission has adopted regulations specifying the informational requirements for a complete notice or application for certification, but if the commission has not adopted regulations, the notice or application for certification shall be deemed filed on the last date the commission receives any additional data that completes the notice or application for certification.

(e) On or before acceptance of a notice or application for certification or upon filing of an application for a small powerplant exemption, a committee, a presiding member and a hearing officer shall be designated pursuant to Sections 1204(a) and 1205 to conduct proceedings on the notice or application.

Note: Authority cited: Sections 25213 and 25541.5, Public Resources Code. Reference: Sections 25211, 25502, 25504, 25516.6, 25520, 25522, 25540.1, 25540.2 and 25541, Public Resources Code.

### **§ 1709.5. Prefiling Review.**

(a) A potential applicant may request the executive director to conduct a prefiling review of existing environmental and other documentation relevant to a proposed notice or application. The purpose of such a review shall be to determine the extent to which information

contained in the existing documents is sufficient to meet the information requirements for a notice or an application.

(b) Any request pursuant to this section shall be in writing and shall be accompanied by at least twelve (12) copies of each document which the potential applicant requests to have reviewed. The executive director may recommend that additional documents known to the commission staff be included in the document review. Potential applicants may, and are encouraged to, file documents in the form of a draft or proposed notice or application.

(c) If the executive director determines that a prefiling review is appropriate, the executive director shall, by such time as may be mutually agreed upon by the potential applicant and the executive director, determine whether the information provided is sufficient to meet the information requirements of a notice or application and, where appropriate, shall provide the potential applicant with a list identifying the additional information necessary to comply with the information requirements.

(d) The potential applicant may request a workshop with the commission staff to discuss any matter relevant to the preparation of a notice or application. The public shall be notified at least 10 days in advance of any such workshop by the executive director in consultation with the public adviser. Nothing in this section shall prohibit a potential applicant from informally exchanging information or discussing procedural issues with the staff without a publicly noticed workshop.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25502, 25520 and 25540.3, Public Resources Code.

#### **§ 1709.7. Informational Hearing, Site Visit, and Schedule.**

(a) Within 45 days after the acceptance of a notice or application for certification or the filing of an application for small powerplant exemption, the committee shall hold one or more informational presentations and site visits in the county or counties in which the proposed sites and related facilities are proposed to be located. The place of the presentations shall be as close as practicable to the proposed sites. Notice of the first informational presentation shall be mailed to all owners of land adjacent to the proposed sites.

(b) At or before the first informational presentation, the commission staff shall file with the committee a written statement summarizing the major issues that the staff believes will be presented in the case. This summary shall not preclude the staff or any other party from raising additional issues later in the case.

(c) No later than 15 days after the last informational presentation, the presiding member shall issue an order establishing the schedule for the prehearing phase of the proceedings on the notice or application. The presiding member may change the schedule at any time upon motion by any party or upon his or her own motion.

(d) At each informational presentation, the applicant shall describe the proposed project, and the staff shall explain how the certification or exemption proceedings are conducted. These presentations shall allow for informal questions to the applicants and the staff from local residents and other interested persons regarding the proposed sites and facilities.

NOTE: Authority cited: Sections 25213 and 25541.5, Public Resources Code. Reference: Sections 25214, 25216.5 and 25509, Public Resources Code.

**§ 1709.8. Withdrawal of Notice or Application.**

(a) Any time after acceptance, the applicant may withdraw the notice or application by filing and serving on all parties written notice of withdrawal. The notice of withdrawal must be authorized and verified in the same manner as the original notice or application, as provided in Section 1707.

(b) Upon receipt of a properly executed withdrawal, the presiding member, or if there is none, the Chairman, shall immediately issue a written order to terminate the notice or application proceeding and close the docket. The records and documents of the proceeding shall continue to be maintained by the Docket Unit.

(c) If the applicant decides to go forward with a project after the notice or application proceeding is terminated, the applicant must file a new notice or application under Section 1709.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25216.5, Public Resources Code.

**C. Public and Agency Rights and Responsibilities; Provisions  
Applicable to Notices and Applications**

**§ 1710. Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.**

(a) All hearings, presentations, conferences, meetings, workshops, and site visits shall be open to the public and noticed as required by subsection (b); provided, however, these requirements do not apply to communications between parties, including staff, for the purpose of exchanging information or discussing procedural issues. Information includes facts, data, measurements, calculations and analyses related to the project. Discussions between the staff and any other party to modify the staff's position or recommendations regarding substantive issues shall be noticed. The staff may also meet with any governmental agency, not a party to the proceedings, for the purpose of discussing any matter related to the project without public notice.

(b) Except for the hearing conducted pursuant to Section 1809(a) and the workshop pursuant to Section 1709.5(d), notice of the initial public hearing on a notice or application shall be mailed or otherwise delivered fourteen (14) days prior to the first such hearing to the applicant, intervenors, and to all persons who have requested notice in writing. Except for continued hearings, notices shall, to the extent possible, be mailed at least fourteen (14) days in advance, and in no case less than ten (10) days in advance.

(c) The public adviser shall be consulted in the scheduling of locations, times, and dates for all noticed hearings, presentations, conferences, meetings, workshops, and site visits so as to encourage maximum public participation.

(d) Notices of Committee hearings, conferences, and meetings shall be signed by a member of the committee or specific designee thereof. Notices of staff workshops, conferences, and meetings shall be signed by the Executive Director or a Deputy Director, unless, in a specific proceeding, the Committee or Commission orders otherwise.

(e) The public adviser shall be afforded a reasonable opportunity to review all notices of hearings, presentations, conferences, meetings, workshops, and site visits for timeliness, completeness, clarity, and adequacy of dissemination.

(f) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be continued from the date, time, and place originally scheduled to a future date, time, and place, by posting notice at the door in the same manner as provided by Government Code section 11129. If the continuance is to a date ten days or more in the future, then notice shall also be provided by mail as provided in subdivision (b).

(g) Publicly noticed hearings, presentations, conferences, meetings, workshops, and site visits may be canceled for good reason, provided the following requirements are met:

(1) A notice of cancellation shall be posted at the door in the same manner as provided by Government Code section 11129.

(2) A notice of cancellation shall be mailed as provided in subdivision (b).

(3) If the notice of cancellation is mailed less than ten (10) days before the originally noticed date, then the staff shall work with the public adviser to ensure that notice is provided to all interested parties by the best means available.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 11129, Government Code; Sections 25216.5 and 25222, Public Resources Code.

#### **§ 1711. Right of Any Person to Comment.**

Any person interested in a notice or application proceeding shall be given an opportunity to make oral or written comments on any relevant matter at any hearing or information meeting held on a notice or an application. The presiding member may specify such conditions on the right to comment as are reasonably necessary for the orderly conduct of the proceeding, and may request that written comments be submitted in advance of any hearing.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1712. Right to Become a Party; Rights and Duties.**

(a) Any person may petition to intervene pursuant to Section 1207 of these regulations. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations. No person who becomes a party shall be permitted to reopen matters or reopen discovery dealt with in the proceeding prior to the time when such person became a party, without a showing of good cause.

(b) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to present witnesses, to submit

testimony and other evidence, to cross-examine other witnesses, to obtain information pursuant to Section 1716, and to file motions, petitions, objections, briefs, and other documents relevant to the proceeding. Each party shall be provided with a copy of the notice or application. The rights set forth herein are in addition to such other rights as the parties may have as set forth in Chapters 2 and 5 of these Regulations, including Section 1212(c).

(c) Each party shall have the responsibility to comply with the requirements for filing and service of documents, the presentation of witnesses and evidence, and any other reasonable conditions which may be imposed by order of the presiding member.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1712.5. Staff as an Independent Party.**

In carrying out its duties pursuant to this chapter, the staff of the commission shall be an independent party to all notice, application, and exemption proceedings. The staff is not required to petition to intervene in such proceedings.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25217(b), Public Resources Code.

#### **§ 1713. Summary of Notice or Application; Distribution.**

(a) Upon filing of the notice or application, the executive director shall prepare a summary of such notice or application. The summary shall be concise and understandable, shall fairly describe the content of the notice or application using the applicant's own words whenever possible, and shall include a description of the commission's procedures concerning proceedings on the notice or application, as appropriate.

(b) As soon as practicable after its preparation, the executive director shall cause a copy of the summary to be mailed or otherwise delivered to public libraries in communities near the proposed sites, including the main branch of a public library in each county in which a facility is proposed to be located in whole or in part; to libraries in Eureka, Fresno, Los Angeles, San Diego, and San Francisco; and to all members, to the ex officio members, to the public adviser, to the hearing officer, to the general counsel, to the applicant, to any person who requests such mailing or delivery, and to all parties to the proceeding.

(c) As soon as practicable after its preparation, the executive director shall cause the summary to be published in a newspaper of general circulation in each county in which a site and related facility, or any part thereof, designated in the notice or application, are proposed to be located.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25505 and 25519(g), Public Resources Code.

#### **§ 1714. Distribution of Copies to Public Agencies; Request for Comments.**

(a) As soon as possible after receipt of the notice or application for a site and related facility requiring a certificate of public convenience and necessity, the executive director shall transmit a copy thereof to the Public Utilities Commission and shall request the Public Utilities



Commission to perform an analysis and to offer comments and recommendations regarding the economic, financial, rate, system reliability, and service implications of the design, construction, operation, and location of the site and related facilities. For applications for a site and related facility which does not require a certificate of public convenience and necessity, the executive director shall transmit a notice of receipt of the application to the Public Utilities Commission.

(b) Within ten days after receipt of the application for a site and related facility that is proposed to connect to the California Independent System Operator-controlled grid, the executive director shall transmit a copy thereof to the California Independent System Operator and shall request the California Independent System Operator to perform an analysis and to offer comments and recommendations regarding the system reliability implications and identification of interconnection facilities required for connection to the California Independent System Operator-controlled grid. For applications which do not connect to the California Independent System Operator-controlled grid, the executive director shall transmit a notice of receipt to the California Independent System Operator.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and Game, to the Air pollution Control District in which the project is located, to the Water Resources Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with # 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

(d) The executive director shall transmit a copy of the notice or application to any Native American government having an interest in matters relevant to the site and related facilities proposed in the notice or application provided the Native American government has a governing body recognized by the Secretary of the Interior of the United States or the Native American government has otherwise requested in writing to receive a copy of the notice or application.

(e) The commission shall request any Native American government covered under subsection (c) to make comments and recommendations regarding the design, operation, and location of the facilities proposed in relation to the environmental quality, public health and safety, and other factors on which they may have expertise. To the extent that the Native American government has land use and related jurisdiction in the area of the proposed sites and related facilities, the commission shall request the Native American government to review and comment upon the land use and related aspects of the proposed sites and related facilities.

(f) Upon receiving a copy of the notice or application, each agency requested to file comments shall inform the presiding member (or the executive director if no committee has been appointed yet) of when such comments can be filed with the commission. Unless otherwise specified by law or by order of the presiding member, all such comments shall be filed prior to the conclusion of the evidentiary hearings held pursuant to Sections 1723, 1748, and 1944 on the notice or application.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25505, 25506, 25506.5, 25507 and 25519, Public Resources Code.

### **§ 1714.3. Agency Comments on a Notice; Purpose and Scope.**

Any agency requested, pursuant to Section 1714 of this article, to transmit its comments and recommendations to the commission on a site and related facility proposed in the notice shall be requested to do each of the following:

(a) Identify each aspect of the proposed site and related facility for which the agency has land use or related jurisdiction or would have such jurisdiction but for the exclusive authority of the commission to certify sites and related facilities;

(b) List and summarize the nature of the laws, regulations, ordinances, or standards which the agency administers or enforces and which are applicable to the proposed site and related facility or would be applicable but for the commission's exclusive authority to certify sites and related facilities pursuant to Section 25500 of the Public Resources Code;

(c) Describe the nature and scope of the information requirements which the applicant must eventually meet in order to satisfy the substantive requirements of the agency; summarize the agency's procedures for resolution of such requirements and indicate the amount of time necessary to do so; describe any other studies, analyses, or other data collection which the applicant, agency, or commission should perform in order to resolve each substantive or permit requirement of the agency;

(d) Based upon available information, conduct a preliminary analysis and provide comments and recommendations to the commission regarding the design, operation, and location of the facilities proposed in the notice, in relation to environmental quality, public health and safety, and other factors on which the agency has expertise or jurisdiction. The preliminary analysis shall be limited to that necessary to advise the commission on whether there is a reasonable likelihood that the proposal will be able to comply with the agency's applicable laws or concerns. The analyses should identify aspects of the proposed site and facilities which are likely to disqualify a proposal as an acceptable site and related facility; and

(e) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the notice, the results of the agency's analyses, studies, or other review relevant to the notice.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25506 and 25509.5, Public Resources Code.

### **§ 1714.5. Agency Comments on an Application; Purpose and Scope.**

(a) Any agency requested, pursuant to Section 1714 of this article, to submit its comments and recommendations to the commission on any aspect of the application shall be requested to do each of the following:

(1) Update as necessary the information requested or submitted by the agency during the notice proceedings;

(2) Perform or conduct such analyses or studies as needed to resolve any significant concerns of the agency, or to satisfy any remaining substantive requirements for the issuance of a final permit by the agency which would have jurisdiction but for the commission's exclusive authority, or for the certification by the commission for the construction, operation, and use of the proposed site and related facilities; and

(3) Submit to the commission, and upon request of the presiding member, present, explain, and defend in public hearings held on the application, the results of the agency's analyses, studies, or other review relevant to the application. The agency may submit comments and recommendations on any aspect of the application, including among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area, and other aspects of the design, construction, or operation of the proposed site and related facility.

(b) Consistent with Section 1747, comments and recommendations submitted to the commission pursuant to this section regarding the project's conformance with applicable laws, ordinances, and standards under the agency's jurisdiction shall be given due deference by the commission staff.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25519(f), (g), (j), Public Resources Code.

#### **§ 1715. Reimbursement of Local Agencies.**

(a) Costs eligible for reimbursement.

(1) Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency, provided that the local agency follows the procedures set forth in this section. These costs include:

(A) permit fees, including traffic impact fees, drainage fees, park-in-lieu fees, sewer fees, public facilities fees and the like, but not processing fees, that the local agency would normally receive for a powerplant or transmission line application in the absence of Commission jurisdiction, and

(B) the added costs of services performed directly in response to Commission requests for review that are not normally covered by the permit fee and for which a fee is normally charged.

(b) Costs ineligible for reimbursement. A local agency may not be reimbursed under this section for the following types of costs, even if actually incurred:

(1) expenses incurred by a local agency for the presentation or defense of positions not reasonably related to the matters which the agency is requested to review or not within the area of the agency's expertise;

(2) expenses for which it receives payment from other sources;

(3) expenses incurred in advocating a position as a formal intervenor to the proceeding, except for the local district and Air Resources Board presentations pursuant to Section 1744.5; or

(4) entertainment and first class travel expenses.

(c) Procedure for approving reimbursement budgets.

(1) To be eligible for reimbursement, a local agency must receive a request for review from the Chairman, Presiding Member, or Executive Director.

(2) To apply for reimbursement, a local agency shall, within 21 days of receiving a request for review from the commission, file an itemized proposed budget with the staff and the applicant estimating the actual and added costs that are likely to be incurred during such review. The proposed budget shall justify each line item amount and explain how each line item is reasonably related to the matters which the agency is requested to review. A local agency's failure to file a proposed budget within the time period specified herein shall not prevent it from receiving reimbursement; however, failure to use the approval process described in this section creates a risk that the local agency will not be reimbursed for work already performed.

(3) Within 10 working days of receiving a proposed budget, the staff shall notify the agency, in writing, whether the proposed budget is complete or incomplete. If the proposed budget is incomplete, the staff shall provide the local agency with a list of deficiencies that must be corrected to complete the proposed budget request.

(4) If neither the commission staff nor the project applicant files a written objection to the proposed budget within 10 working days after the proposed budget is determined to be complete, then the proposed budget is deemed approved.

(5) If a local agency reasonably incurs costs in responding to a commission request for review of a project before its proposed budget is approved, the local agency may include such costs in the budget retroactively.

(6) A local agency may apply for augmentations or other changes to an approved budget by filing a request for an amended budget. Requests for an amended budget shall also be processed in accordance with this subdivision.

(d) Procedure for approving reimbursement invoices.

(1) A local agency seeking reimbursement must receive approval of its proposed budget before it files an invoice for expenses actually incurred. Reimbursement may not exceed the approved budget.

(2) On either a monthly or quarterly basis, the local agency seeking reimbursement shall file with the commission staff and the project applicant an invoice for the expenses actually incurred during the past month or quarter.

(3) If the applicant does not object to the invoice within 10 days after receipt, then it shall pay the local agency the amount of the invoice within 14 days of the receipt of the invoice.

(e) Resolving disputes. If there is a dispute over a reimbursement budget under subdivision (c) above, or a reimbursement invoice under subdivision (d) above, which cannot be directly resolved between the applicant and the local agency, the staff shall notify the committee in writing of the dispute. The committee shall resolve the dispute by written order.

The committee shall have discretion to determine whether and to what extent hearings are required to resolve the dispute.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25538, Public Resources Code.

#### **§ 1716. Obtaining Information.**

(a) The executive director or the chief counsel shall have authority to request or otherwise obtain from the applicant such information as is necessary for a complete staff analysis of the notice or application.

(b) Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request.

(c) Any public agency which is not a party and which has been requested to provide comments on the notice or application shall have the same rights as a party to obtain information necessary to comply with the commission's request for comments. To the extent practicable, the staff shall coordinate requests from agencies to the applicant to avoid duplicative requests.

(d) Any party may request from a party other than the applicant information which is reasonably available to the responding party and cannot otherwise be readily obtained, and which is relevant to the proceeding or reasonably necessary to make any decision on the notice or application. All such requests shall state the reasons for the request.

(e) All requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown.

(f) Any party requested to provide information pursuant to this section shall, within 20 days of receiving the request, notify the requesting party and the committee in writing if it is unable to provide or objects to providing the information requested of it. Such notification shall state the reasons for the inability or the grounds for the objection. Absent such an objection, the party shall provide the information requested within 30 days of the date that the request is made. The dates specified in this section may be changed by mutual agreement of the parties or by committee order.

(g) If the requesting party or agency is unable to obtain information as provided in this section, such party or agency may petition the committee for an order directing the responding party to supply such information. A party petitioning the committee for an order to provide information must do so within either 30 days of being informed in writing by the responding party that such information will not be provided or within 30 days of the date the information was provided or was due. The committee may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, either grant or deny the petition, in whole or in part. The committee may direct the commission staff to supply such of the information requested as is available to the staff.

(h) The committee shall have the authority to require from any electric utility, including any aggregator, scheduling coordinator, energy service provider, or independent power producer, information which is specific to the subject notice or application and reasonably necessary to make any decision on the notice or application; provided, however, that such information, or its equivalent, is not reasonably available from any party or from publicly available records. Applications for confidentiality may be filed pursuant to Title 20, California Code of Regulations, section 2501 et seq.

(i) All information requests and responses shall be served on all parties to the proceeding by the requesting and responding parties respectively; provided, however, that requests for information made orally at a public meeting or hearing authorized by the presiding member need not be made in writing or served unless otherwise required by the presiding member. The presiding member may set reasonable time limits on the use of, and compliance with, information requests in order to avoid interference with any party's preparation for hearings or imposing other undue burdens on a party. No information requests shall be submitted by any party after release of the presiding member's hearing order except upon petition to the presiding member.

(j) Any witness testifying at a hearing shall to the extent that it does not unduly burden the witness, make available to any party on request copies of any work papers relied upon in the preparation of the testimony. If a witness for the applicant sponsors any portion of the notice or application for inclusion in the hearing record, the applicant shall make available, on request, all work papers relied upon in the preparation of the sponsored portion.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code; and Section 11181, Government Code.

#### **§ 1716.5. Motions, Hearings, Decision.**

Any party may file a motion or petition with the presiding member regarding any aspect of the notice or application proceeding. Responses to the petition by other parties shall be filed within 15 days of the filing of the petition unless otherwise specified by the presiding member. The presiding member may set a hearing to consider argument on the petition, and shall, within 30 days of the filing of the petition, act to grant or deny the petition, in whole or in part, or schedule further hearings or written responses on the petition.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25502, 25519(b) and 25541, Public Resources Code.

#### **§ 1717. Distribution of Pleadings, Comments, and Other Documents.**

(a) Any party or agency who submits petitions (except petitions to intervene), motions, briefs, comments, written testimony or exhibits, shall file its documents in accordance with section 1210.

(b) Upon receipt of any agency comments and recommendations, and unless such service is already provided by the agency, the executive director shall immediately serve such comments and recommendations on the applicant and all parties to the proceeding and to any other person who requests a copy of such comments and recommendations.

(c) During the course of the proceedings under this article, the presiding member shall, if requested by any party or member of the public, cause to be distributed, to all parties and to any persons so requesting, a list of all materials and documents introduced into the record of the proceeding. Such list shall be kept up to date on at least a weekly basis by the Dockets Unit and kept on file with the record of the proceeding.

(d) The executive director shall cause a copy or summary of materials and documents introduced into the record of the proceeding to be placed in a public document room in each county in which a proposed site and related facility or any portion thereof is located.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Section 25216.5(a), Public Resources Code.

#### **§ 1718. Staff Meetings; Purposes.**

(a) At any time after a notice or application is filed, the staff may initiate informal, voluntary meetings with the applicant, other parties, interested agencies, or the public on matters relevant to the notice or application. Such meetings may include workshops, site visits, or other information exchanges.

(b) All meetings shall be noticed pursuant to Section 1710 of these regulations and shall be open to the public. The notice shall list the topics and purposes of the meetings. Where such meetings are intended to discuss social, economic, or other impacts on communities surrounding a proposed site, they shall, to the extent feasible, be held in or near the communities affected.

(c) Meetings initiated by staff may be held for any of the following purposes:

(1) To allow parties to solicit and exchange information relevant to the notice or application;

(2) To allow parties to identify areas of factual and legal agreement;

(3) To allow parties to identify areas of disagreement, to refine issues, and to develop the positions and contentions of the parties; or

(4) To allow members of the public to recommend areas of inquiry to the parties, to identify issues, and to ask questions of the applicant, staff and parties concerning each siting proposal, the commission's siting procedures, and possible positions of the parties.

(d) The public adviser, and in the adviser's absence, the staff counsel, shall ensure that all persons are provided a reasonable opportunity to participate in the discussions at each meeting.

(e) The presiding member may require the parties to report periodically on the scope, purpose, and progress of such meetings. Any person dissatisfied with the manner in which such meetings are being conducted may petition the presiding member to take remedial action.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210 and 25216.5, Public Resources Code.

#### **§ 1718.5. Prehearing Conferences; Hearing Order.**

The committee shall hold one or more prehearing conferences with all parties and interested agencies to establish procedures, identify issues, and set schedules for adjudicatory or nonadjudicatory hearings on the notice or application.

(a) The presiding member shall request the applicant to indicate when it will be prepared to present its case or evidence in support of the notice or application, and shall request the staff and each participating agency to indicate when each will be prepared to present the results of its assessments to the commission.

(b) Parties who have agreed on statements of facts shall make such statements and lists of probable sponsoring witnesses available to all interested persons at the prehearing conference. To the extent practical, such statements should be served on all parties five days prior to the prehearing conference. Such statements shall not be binding on the committee and may be challenged by any person.

(c) Parties who have agreed on a statement of issues requiring adjudication shall submit such statements at the prehearing conference. The presiding member may direct the staff to present at the conference a statement of issues which the staff believes must be resolved in the applicant's favor before approval of the notice or the application is granted. The staff statement shall not be binding on the committee.

(d) The presiding member, in consultation with other committee members, shall prepare a hearing order to guide the hearings on the notice or application. The order shall set forth the schedule and procedures for hearings, indicate the order of presentation of the parties and interested agencies, and identify the issues to be addressed in the hearings.

(e) This section shall not preclude parties from agreeing to and offering additional statements of facts and issues during the hearings.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25211 and 25509.5, Public Resources Code.

#### **§ 1719. Consolidation or Severance Proceedings.**

(a) Upon motion of a member of a committee or of any party, and for good cause shown, the commission may order the consolidation of part or all of any notice or application proceeding with any other notice or application proceeding, or the severance of part of any notice or application proceeding, if reasonably necessary to ensure the complete, fair, or timely consideration of any siting proposal.

(b) A decision on any site and related facility shall not be delayed by reason of consolidation or severance unless agreed to by the applicant.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code. Reference: Sections 25516.6, 25540.2, Public Resources Code.



### **§ 1720. Reconsideration of Decision or Order.**

(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. In addition to being served on all parties as required by section 1210, the petition for reconsideration shall be filed with the chief counsel of the commission.

(b) The commission shall hold a hearing for the presentation of arguments on a petition for reconsideration and shall act to grant or deny the petition within 30 days of its filing. In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.

(c) If the commission grants a petition for reconsideration, or if on its own motion it orders reconsideration, then within 90 days, or within a longer period set by the commission for good cause stated, the commission shall hold a subsequent hearing, which may include the taking of evidence, and shall decide whether to change the decision or order. In the absence of an affirmative vote of three members of the commission to change the decision or order, it shall stand.

(d) The commission may stay the effective date of all or part of a decision or order pending reconsideration thereof. The commission shall specify the length of the stay, which shall expire no later than the end of the period for action upon reconsideration, as established in or pursuant to subdivision (c) of this section.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25530, Public Resources Code.

### **§ 1720.2. Termination of NOI, AFC, and SPPE Proceedings.**

(a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion.

(b) A committee order terminating a proceeding must be approved by the full commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25210, 25216.5, 25519(b) and 25541, Public Resources Code.

### **§ 1720.3. Construction Deadline.**

Unless a shorter deadline is established pursuant to § 25534, the deadline for the commencement of construction shall be five years after the effective date of the decision. Prior

to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25210, 25216.5, and 25519(b), Public Resources Code.

#### **§ 1720.4. Effective Date of Decisions.**

For the purposes of implementing of sections 25530, 25531, and 25901 of the Public Resources Code, a decision or order is adopted, issued, final, and effective on the day when the decision or order is docketed, unless the decision or order states otherwise.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25210, 25216.5, 25502, 25519(b) and 25541, Public Resources Code.

### **Article 2. Procedures for Considering Notices of Intention to File an Application for Certification**

#### **§ 1721. Purpose of Notice and Notice of Intention Proceeding.**

(a) The purpose of a notice, and such supporting documentation as may be filed concurrently with the notice, is to provide the commission, interested agencies, and interested members of the public with an informative document which does all of the following:

(1) Accurately describes the nature, size, and location of the sites and related facilities proposed by the applicant;

(2) Fairly identifies and explains the principal environmental, economic, and technological advantages and disadvantages of each siting proposal in the notice;

(3) Identifies measures which the applicant is considering to mitigate the principal disadvantages of each siting proposal in the notice;

(4) Explains the need for the proposed facilities;

(5) Describes the commercial availability of the generation technologies proposed in the notice (if not already determined to be commercially available by the commission); discusses the economic comparability of the proposals based upon comparative generation costs available to the applicant; and explains the impact of the proposed facilities on the overall reliability of the service area system;

(6) Specifies the measures proposed or being considered by the applicant to ensure public health, safety, and reliability during construction and operation of the proposed facilities at each site; and

(7) Indicates the degree to which the proposed facilities can be constructed and operated at each site in conformity with applicable federal, state, and local standards, laws, ordinances, and regulations, including any long-range land use plans or guidelines adopted by any federal, state, regional, or local planning agency.

(b) The purpose of notice of intention proceedings shall be to engage the applicant, the commission, interested agencies and members of the public in an open planning process designed to identify sufficient acceptable sites and related facilities. To this end, each notice of intention proceeding shall be conducted in order to determine the technical, environmental, public health and safety, economic, and social and land use acceptability of alternative sites and related facilities, by accomplishing each of the following:

(1) To provide information on the nature of the siting proposals to interested agencies and members of the public, and to actively solicit their assessments, comments, and recommendations on any aspect of the sites and related facilities proposed in the notice, including recommendations for modification in the location, design, construction or operation of the proposed facilities, or alternatives to the proposal;

(2) To determine whether there is a reasonable likelihood that the facilities will comply with applicable federal, state, regional and local standards, laws, ordinances, regulations, and plans;

(3) To attempt to resolve critical issues affecting the ability to employ the proposed technology at each of the sites and to determine the feasibility of any conditions or modifications necessary to make any site and related facilities proposed acceptable;

(4) To determine whether the proposed facilities can be designed, constructed, and operated in a manner which ensures public health, safety, and reliability, by evaluating the adequacy of the measures proposed by the applicant, assessing their conformity with applicable standards, and where appropriate, determining the necessity, feasibility, and relative costs and benefits of additional measures;

(5) To identify the most serious environmental impacts and assess the feasibility of mitigating such impacts;

(6) To consider alternatives to the proposal, including feasible alternative sites, facilities, or sites and related facilities which may substantially lessen any significant adverse effects which the applicant's proposals may have on the environment or which may better carry out the policies and objectives of the Act;

(7) To consider the economic, financial, rate, system reliability, and service implications of the proposed facilities, in coordination with the Public Utilities Commission (for facilities requiring a certificate of public convenience and necessity) or with the board of directors or other appropriate body of a municipal utility (for all other facilities); and

(8) To prevent any needless commitment of financial resources and regulatory effort prior to a determination of the basic acceptability of, and need for, the proposed facilities, and the suitability of proposed sites to accommodate the facilities; and to eliminate from further consideration and commitment of resources any site and related facility found to be unsuitable, unneeded, or otherwise unacceptable.

(c) In assessing the proposed sites and related facilities, the commission shall defer until the formal application stage (1) a detailed scrutiny of engineering and design aspects, (2) a detailed identification and analysis of significant adverse environmental impacts, or (3) a precise analysis of need for new generating facilities; provided, however, that issues relating to such matters may be considered where resolution of such issues will not unduly hinder or burden the

parties and the proceeding and evidence for the resolution of such issues is readily available, or where resolution of such issues is necessary to determine the acceptability of one or more of the sites and related facilities proposed.

(d) It shall be the responsibility of the presiding member to ensure that the notice proceeding is conducted in a manner consistent with the purposes of this article and to ensure that the needless expenditure of time, effort, and financial resources in considering matters more appropriate for the formal certification stage is avoided.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25502- 25516.6, Public Resources Code.

#### **§ 1722.5. Air Quality Report on Notice; Preparation; Contents; Testimony.**

(a) Upon filing of a notice, the local air district (or the Air Resources Board if the local district fails to participate) in which a site is located shall prepare and submit a report prior to the conclusion of the nonadjudicatory hearings held pursuant to Section 1723. Each agency submitting a report shall testify in support of the report at hearings on the notice. The report shall include, but not be limited to:

(1) A preliminary specific definition of best available control technology (BACT) for the proposed facility;

(2) A preliminary discussion of whether there is a substantial likelihood that the requirements of the applicable new source review rule and all other applicable air quality regulations can be satisfied by the proposed facility; and

(3) A preliminary list of conditions which the proposed facility must meet in order to comply with the applicable rules and regulations.

(b) The ARB shall review and submit written comments on each report. After considering each of the local air district reports, if the ARB is of the opinion that none of the proposed sites has a substantial likelihood of meeting the requirements of the applicable air quality regulations (including emission limitations), the ARB and commission staff, in consultation with the local districts and prior to the conclusion of the nonadjudicatory hearings, shall propose an alternative site or sites, in or near the applicant's service area, which has a greater likelihood of meeting the applicable air quality regulations and which merits further study. The proposal shall include the reasons therefore. If such a proposal is filed, the presiding member may direct the applicant to evaluate major siting constraints of the proposed alternative for presentation at the adjudicatory hearings held pursuant to Section 1725. Each air district and the ARB shall supplement their reports as necessary in response to changes in the applicant's proposal which may occur during the notice proceeding.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25506, Public Resources Code.

#### **§ 1723. Nonadjudicatory Hearings; Purposes and Procedures.**

The committee shall commence nonadjudicatory hearings on the notice pursuant to the hearing order issued by the presiding member.

(a) The hearings shall be used to provide information on the proposed sites and facilities to the public. The presiding member shall reserve a portion of each hearing to permit members of the public to question the applicant and staff about the proposals or about each party's contentions. Both parties shall make qualified persons available to answer questions on the matters scheduled for consideration at each hearing. The presiding member shall limit questions to the applicant and staff to those necessary to identify issues or solicit relevant information on the proposals and shall defer adjudication of identified issues until hearings held under Section 1725.

(b) The hearings shall be used to develop an evidentiary basis for the findings and conclusions required for a decision on the notice. The applicant, staff, and other parties shall present evidence in the hearings pursuant to Section 1723.5 and the hearing order. Testimony or evidence based upon statements of facts agreed to by the applicant or staff which set forth the ultimate positions of either party on need, public health and safety, and environmental acceptability may be admitted into evidence without the necessity of reading the entire statements into the record only if a supporting witness presents an informative summary of the facts and evidence at the hearing and any person so requesting is provided a reasonable opportunity to ask relevant, nonrepetitive questions of the sponsoring witnesses. The presiding member may require oral summaries of other joint statements of facts offered into evidence.

(c) The hearings shall be used to solicit the views and comments of the public, parties, and governmental agencies on the environmental, public health and safety, economic, social, and land use impacts of the facilities at the proposed sites.

(d) The hearings shall be used to identify issues which require adjudication, issues which may be deferred to the certification stage, and issues which may be eliminated from the proceeding. Issues may be raised by submitting comments or testimony which dispute the contentions of the applicant or staff, or by asking questions of witnesses at hearings. The presiding member may permit a party to present evidence to show that an apparently disputed matter presents no issue of fact, or may defer such evidence until the adjudicatory hearings. The presiding member shall determine whether the evidence presented on each matter is sufficient to raise a genuine, relevant, factual issue appropriate for adjudication in subsequent hearings.

(e) The presiding member shall conclude the hearings under this section whenever he or she is satisfied that the purposes of this section have been achieved and that the evidentiary record and issues are sufficiently developed to prepare the summary and hearing order required by Section 1724.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25509.5, Public Resources Code.

#### **§ 1723.5. Presentation of Evidence; Burdens of Producing Evidence; Burdens of Proof.**

(a) The applicant has the burden of proof and of producing evidence on each of the following:

(1) The probable need for the proposed facilities;

(2) A reasonable likelihood that the principal adverse impacts on the environment can be mitigated or avoided;

(3) A reasonable likelihood that the facilities can be constructed and operated safely and reliably;

(4) The suitability of the sites to accommodate the facilities;

(5) The reasonableness of the likely financial impacts of constructing and operating the facilities; and

(6) A reasonable likelihood that the construction and operation of the proposed facilities will comply with the federal, state, regional, and local laws, standards, ordinances, and land use plans which are applicable to the proposals.

(b) The staff shall present its independent assessment of the need for the facilities and of the adequacy of the measures proposed by the applicant to protect environmental quality and to protect public health and safety. The staff may also present evidence on any other matter relevant to the proceeding and shall present evidence on such matters and issues as the presiding member directs.

(c) Any party or person may propose modifications in the design, construction, location, or other conditions to protect public health and environmental quality, to ensure safe and reliable operation, or to meet the standards, policies, and guidelines established by the commission. If the proponent of any such modification or condition demonstrates its apparent reasonableness, the presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.

(d) The staff shall conduct an independent environmental assessment of the applicant's proposals and present a report on its findings at the hearings. The report shall summarize the principal adverse environmental effects of the applicant's siting proposals, evaluate the potential mitigation measures available to the applicant, and assess the feasibility of reasonable alternative sites and facilities other than those proposed by the applicant, which the staff believes may substantially lessen or avoid the principal adverse effects of the applicant's proposal. Any person may suggest one or more of such alternatives to the staff and committee for consideration in the staff report.

(e) Any party or person may propose that the commission approve any alternative site and related facility in lieu of or in addition to the applicant's proposals. The proponent of such alternative siting proposal has the burden of presenting evidence to establish the suitability and acceptability of such proposal as set forth in subsection (a) of this section. The presiding member may also direct the staff to investigate any alternative siting proposal.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25509.5, 25511 and 25513, Public Resources Code.

#### **§ 1724. Summary and Hearing Order; Preparation; Contents; Distribution.**

(a) After the conclusion of the nonadjudicatory hearings, and no later than 150 days after acceptance of the notice, the presiding member shall prepare and publish a summary of the hearing record and a hearing order pursuant to Public Resources Code Sections 25512 and 25512.5 to guide subsequent adjudicatory hearings.

(b) The hearing order shall identify issues to be adjudicated in subsequent hearings, issues which have been eliminated, and issues which should be deferred to the certification proceeding. To the extent permitted by the record, the summary shall also include proposed findings on matters relevant to the final report and proposed conditions for filing an application.

(c) Based upon information presented in the hearings, the summary and hearing order shall briefly describe each siting proposal, shall summarize the principal significant environmental effects of each siting proposal, and shall describe reasonable alternatives and mitigation measures which could substantially reduce the adverse effects. The summary and hearing order shall list environmental issues regarding potential adverse effects, mitigation measures, and alternatives which require resolution in the subsequent adjudicatory hearings. The summary should briefly describe and discuss those environmental issues important to a decision on the notice.

(d) The presiding member shall publish notice of the availability of the summary and hearing order in a newspaper of general circulation for the county or counties where the sites are located.

(e) The presiding member shall provide all parties with a reasonable opportunity to submit comments, recommendations, and proposed findings and conclusions for the summary and hearing order prior to its preparation. The presiding member may hold a public conference to consider amendments to the hearing order after its publication.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25512 and 25512.5, Public Resources Code.

#### **§ 1725. Adjudicatory Hearings.**

Pursuant to the hearing order, the assigned committee shall conduct adjudicatory proceedings as provided in Public Resources Code Section 25513.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25513, Public Resources Code.

#### **§ 1726. Final Report; Preparation; Distribution.**

(a) The presiding member shall prepare a final report on the notice, as provided in Section 25514 of the Public Resources Code. The report shall propose such findings and conclusions as are warranted by the record of the proceeding; shall recommend either approval or disapproval of the notice and the reasonable conditions, if any, which must be satisfied before certification is granted; and shall contain a proposed decision on the notice.

(b) The final report shall contain the committee's responses to significant environmental points raised in the notice proceeding, including findings and conclusions on each of the environmental issues in the summary and hearing order or otherwise important to a decision on the notice. The report shall include findings on the need for and feasibility of any mitigation measures or alternatives considered in the hearings. The report shall include findings and conclusions on the relative merits and acceptability of each alternative site and related facility proposed and considered in the proceeding, and conditions for filing an application on each site and facility approved.

(c) The final report shall be distributed in the same manner as the summary and hearing order.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25514, Public Resources Code.

#### **§ 1726.5. Request for PUC Comments.**

If the final report recommends any modifications, conditions or criteria for any site and related facility requiring a certificate of public convenience and necessity from the Public Utilities Commission, the presiding member shall request the comments of the PUC in accordance with Section 25514.3 of the Public Resources Code.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25514.3, Public Resources Code.

#### **§ 1727. Final Report and Proposed Decision Hearings.**

(a) The Commission or the assigned committee may hold one or more hearings to consider any statements of the parties on the final report and on the proposed decision, and the comments and recommendations of interested agencies and members of the public. Such statements may contain recommendations for amendments to the final report and proposed decision.

(b) The chairman or the presiding member may require that all statements by parties and other persons be filed in writing in advance of the hearings. No new or additional evidence shall be considered at the hearings under this section unless the commission or the assigned committee adopts a motion to reopen the evidentiary record. In such case, the commission or the assigned committee shall afford such notice to the parties as appears fair and reasonable under the circumstances, but in no event shall such notice be given less than ten days prior to the hearings.

(c) Any member may propose an alternative decision, including supporting findings and conclusions. Such proposed decision may also be considered at the hearings under this section but need not be acted upon until the commission makes its decision on the notice. The commission or the assigned committee shall provide any party with a reasonable opportunity in the hearings or prior to adoption of the final decision to comment on any proposed decision.

(d) The commission shall adopt, reject, or amend and adopt, any proposed decision considered in the hearing on the final report.

(e) The decision shall be based exclusively on the evidentiary record of the proceedings on the notice. The decision shall conform to the requirements of Sections 25516, 25516.1, 25516.5 and 25516.6 of the Public Resources Code.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25515, 25516.1, 25516.5 and 25516.6, Public Resources Code.



#### **§ 1729. Nonapprovable Sites or Non-Certifiable Sites.**

(a) The commission shall not find acceptable any site and related facility to which the provisions of Sections 25526 or 25527 of the Public Resources Code apply unless the finding required by the applicable section has been made.

(b) The applicant shall be required to comply with the following requirements of Sections 25526 and 25527 at the application stage:

(1) For a site in an area designated by the Coastal Commission, the applicant shall demonstrate to the Coastal Commission that the proposed facilities will cause no substantial adverse environmental effects on any designated area. The Coastal Commission shall submit its findings to the Energy Commission prior to the conclusion of the hearings held under Section 1748 of these regulations.

(2) For a site in an area designated by the BCDC, the applicant shall demonstrate to the BCDC that the proposed facility will cause no substantial adverse environmental effects on any designated area. The BCDC shall submit its findings to the Energy Commission prior to the conclusion of the hearings held under Section 1748 of these regulations.

(3) For a site in an area listed in Section 25527, the applicant shall demonstrate to the Energy Commission that the proposed facility will cause no substantial adverse environmental effects on any such area. The commission's findings shall be contained in the proposed decision on the application.

(4) For a site in any area covered by this section, the applicant shall demonstrate prior to the conclusion of hearings held under Section 1748 that the approval of any public agency having ownership or control of such lands has been obtained.

Note: Authority cited: Sections 25518(e) and 25541.5, Public Resources Code. Reference: Sections 25526 and 25527, Public Resources Code.

#### **§ 1730. Approval; Required Finding for Air Quality.**

The commission shall not approve any site and related facility unless it determines that there is a substantial likelihood that it will meet the applicable air quality regulations; provided, however, that if the commission determines that the facility is urgently needed, the applicant has made a good faith effort to find acceptable alternative sites and related facilities, and no otherwise approvable site has a substantial likelihood, it may approve the single site and related facility that is otherwise acceptable and that is most likely to meet all applicable air quality regulations. In such event, the commission shall request the ARB and local districts to appear at the hearings on the final report and advise the commission on which site is most likely to meet the requirements.

Note: Authority cited: Sections 25518, 25541.5, Public Resources Code. Reference: Sections 21081, 25516, Public Resources Code.

### **§ 1731. Environmentally Unacceptable Sites.**

(a) If the commission finds that the construction and operation of a power plant and related facilities at a site would cause a significant adverse effect on the environment, the commission shall follow the provisions of this section.

(1) The commission may find the site and related facilities acceptable despite the probability of a significant adverse effect if the commission finds that there is a reasonable likelihood that the adoption of feasible mitigation measures could substantially reduce the significant adverse effect.

(2) If the commission finds that there is not a reasonable likelihood that feasible mitigation measures could substantially reduce the significant adverse effect, and that there is available a feasible alternative that could avoid or substantially reduce the significant adverse effect, the commission shall find the proposed site unacceptable.

(b) This provision shall not apply to any notice for which only one site and related facility is required.

(c) This provision shall not enlarge the scope of environmental review required by Sections 1723 through 1726.

Note: Authority cited: Sections 25218(e), and 25541.5, Public Resources Code. Reference: Sections 21080.5, and 25541.5, Public Resources.

## **Article 3. Procedures for Considering Applications for Certification**

### **§ 1741. Application Proceeding; Purpose and Objectives.**

(a) The purpose of an application proceeding is to ensure that any sites and related facilities certified provide a reliable supply of electrical energy at a level consistent with the need for such energy, and in a manner consistent with public health and safety, promotion of the general welfare, and protection of environmental quality.

(b) The application proceeding shall be conducted in order to accomplish all of the following objectives:

(1) To ensure that the applicant incorporates into the project all measures that can be shown to be feasible, reasonably necessary, and available to substantially lessen or avoid the project's significant adverse environmental effects, and to ensure that any facility which may cause a significant adverse environmental effect is certified only if the benefits of such facility outweigh its unavoidable adverse effects.

(2) To ensure that the applicant takes all measures that can be shown to be feasible, reasonably necessary, and available to comply with applicable governmental laws and standards; to ensure that any facility certified complies with applicable federal law; and to ensure that any facility which fails to comply with an applicable local or state law or standard is certified only if such facility is required for public convenience and necessity and there are not more prudent and feasible means of achieving such convenience and necessity.

- (3) To ensure safe and reliable operation of the facility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code. Reference: Sections 21081, 25523 and 25525, Public Resources Code; and 14 California Code of Regulations, Sections 15091 and 15093.

**§ 1742. Review of Environmental Factors; Staff and Agency Assessment.**

(a) Information on the environmental effects of the proposed facility and mitigation measures proposed by the applicant shall be provided in the application as specified in the appropriate appendix.

(b) Upon acceptance of the application pursuant to Section 1709, the commission staff and all concerned environmental agencies shall review the application and assess whether the report's list of environmental impacts is complete and accurate, whether the mitigation plan is complete and effective, and whether additional or more effective mitigation measures and reasonably necessary, feasible, and available.

(c) The applicant shall present information on environmental effects and mitigation and the staff and concerned agencies shall submit the results of their assessments at hearings held pursuant to Section 1748. The staff's assessment shall focus on those environmental matters not expected to be considered by other agencies, in order to ensure a complete assessment of significant environmental issues in the proceeding.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources code. Reference: Sections 21081 and 25519, Public Resources Code.

**§ 1742.5. Environmental Review; Staff Responsibilities.**

(a) The staff shall review the information provided by the applicant and other sources and assess the environmental effects of the applicant's proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures.

(b) The staff shall present the results of its environmental assessments in a report (or exhibit) to be offered as evidence at the hearings held under Section 1748.

(c) The staff report shall be written to inform interested persons and the commission of the environmental consequences of the proposal, and to assist the presiding member in preparing the presiding member's proposed decision required by Section 1749. The staff report shall indicate the staff's positions on the environmental issues affecting a decision on the applicant's proposal.

(d) The staff shall monitor the assessment of environmental factors by interested agencies and shall assist and supplement the agencies' assessment to ensure a complete consideration of significant environmental issues in the proceeding.

(e) The staff shall distribute a notice of availability of the staff report to all interested persons.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5, 25217(b) and 25519(c), Public Resources Code.

#### **§ 1743. Review of Safety and Reliability Factors; Staff and Agency Assessment.**

(a) Information on safety and reliability of the proposed facility, describing in detail the measures proposed to ensure the safe and reliable operation of the facility shall be provided in the application as specified in the appropriate appendix.

(b) Upon acceptance of the application, the commission staff and interested agencies shall assess the completeness and adequacy of the measures proposed by the applicant in terms of applicable health and safety standards and other reasonable requirements. The staff shall consult with other agencies with special expertise or interest in safety and reliability matters. The staff's assessment shall focus on those safety and reliability matters not expected to be considered by other agencies. The staff may recommend additional measures which are economically and technically feasible and can be shown to be effective in ensuring safe and reliable operation.

(c) The applicant's information on safety and reliability, the results of the staff's assessment, and any additional agency comments and recommendations shall be presented and considered at hearings on the application held pursuant to Section 1748.

Note: Authority cited: Section 25216.5(a), Public Resources Code. Reference: Section 25520(b), Public Resources Code.

#### **§ 1744. Review of Compliance with Applicable Laws.**

(a) Information on the measures planned by the applicant to comply with all applicable federal, state, regional, and local laws, regulations, standards, and plans shall be provided in the application as specified in the appropriate appendix. Such information shall not duplicate information contained in environmental, safety and reliability, and air quality sections of the application.

(b) Upon acceptance of the application, each agency responsible for enforcing the applicable mandate shall assess the adequacy of the applicant's proposed compliance measures to determine whether the facility will comply with the mandate. The commission staff shall assist and coordinate the assessment of the conditions of certification to ensure that all aspects of the facility's compliance with applicable laws are considered.

(c) The applicant's proposed compliance measures and each responsible agency's assessment of compliance shall be presented and considered at hearings on the application held pursuant to Section 1748.

(d) If the applicant or any responsible agency asserts that an applicable mandate cannot be complied with, the commission staff shall independently verify the non-compliance, and advise the commission of its findings in the hearings.

(e) Comments and recommendations by a interested agency on matters within that agency's jurisdiction shall be given due deference by Commission staff.

NOTE: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5(a), 25217(b) and 25523, Public Resources Code.

#### **§ 1744.5. Air Quality Requirements; Determination of Compliance.**

(a) The applicant shall submit in its application all of the information required for an authority to construct under the applicable district rules, subject to the provisions of Appendix B(g)(8) of these regulations.

(b) The local air pollution control officer shall conduct, for the commission's certification process, a determination of compliance review of the application in order to determine whether the proposed facility meets the requirements of the applicable new source review rule and all other applicable district regulations. If the proposed facility complies, the determination shall specify the conditions, including BACT and other mitigation measures, that are necessary for compliance. If the proposed facility does not comply, the determination shall identify the specific regulations which would be violated and the basis for such determination. The determination shall further identify those regulations with which the proposed facility would comply, including required BACT and mitigation measures. The determination shall be submitted to the commission within 240 days (or within 180 days for any application filed pursuant to Sections 25540 through 25540.6 of the Public Resources Code) from the date of the acceptance.

(c) The local district or the Air Resources Board shall provide a witness at the hearings held pursuant to Section 1748 to present and explain the determination of compliance.

(d) Any amendment to the applicant's proposal related to compliance with air quality laws shall be transmitted to the APCD and ARB for consideration in the determination of compliance.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.3 and 25523, Public Resources Code.

#### **§ 1745. Location of Hearings and Conferences.**

Hearings and formal conferences shall be held pursuant to Public Resources Code Section 25521.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25521, Public Resources Code.

#### **§ 1747. Final Staff Assessment.**

At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy.

NOTE: Authority cited: Sections 25218(e), 25539 and 25541.5, Public Resources Code. Reference: Sections 21080.5, 25519(c), 25523, Public Resources Code.

#### **§ 1748. Hearings; Purposes; Burden of Proof.**

No earlier than ninety (90) days after the acceptance of the application, the committee shall commence hearings on the application.

(a) The hearings shall be used to identify significant adverse impacts of the proposal on the environment which were not identified in proceedings on the notice of intention and shall assess the feasibility of measures to mitigate the adverse impacts. The applicant's environmental information and staff and agency assessments required by Section 1742 shall be presented.

(b) The hearings shall consider whether the facilities can be constructed and operated safely and reliably and in compliance with applicable health and safety standards, and shall assess the need for and feasibility of modifications in the design, construction, or operation of the facility or any other condition necessary to assure safe and reliable operation of the facilities. The applicant's safety and reliability information and staff and agency assessments required by Section 1743 shall be presented.

(c) The hearings shall consider whether the facilities can be constructed and operated in compliance with other standards, ordinances, regulations and laws and land use plans applicable to the proposed site and related facility. The applicant's proposed compliance measures and the staff and agency assessments required by Section 1744 shall be presented. The determination of compliance required by Section 1744.5 shall also be presented.

(d) Except where otherwise provided by law, the applicant shall have the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facility.

(e) The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision. The presiding member may direct the applicant and/or staff to examine and present further evidence on the need for and feasibility of such modification or condition.

(f) Any party to the application proceeding shall be provided a reasonable opportunity to move to strike portions of prior testimony taken during the notice proceeding. Such motion may be based on incorrectness, irrelevance, or changed circumstances.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25216.5 and 25521, Public Resources Code.

#### **§ 1749. Presiding Member's Proposed Decision; Distribution; Comment Period.**

(a) At the conclusion of the hearings, the presiding member, in consultation with the other committee members shall prepare a proposed decision on the application based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.

(b) Any person may file written comments on the presiding member's proposed decision. The presiding member shall set a comment period of at least 30 days from the date of distribution.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25519(c) and 25523, Public Resources Code.

#### **§ 1751. Presiding Member's Proposed Decision; Basis.**

(a) The presiding member's proposed decision shall be based exclusively upon the hearing record, including the evidentiary record, of the proceedings on the application.

(b) The presiding member's proposed decision shall contain reasons supporting the decision and reference to the bases for each of the findings and conclusions in the decision.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25522, Public Resources Code.

#### **§ 1752. Presiding Member's Proposed Decision; Contents.**

The presiding member's proposed decision shall contain the presiding member's recommendation on whether the application should be approved, and proposed findings and conclusions on each of the following:

(a) The extent to which the proposed facilities are in compliance with:

(1) Public health and safety standards, including any standards adopted by the commission;

(2) Applicable air and water quality standards; and

(3) Any other applicable local, regional, state, and federal standards, ordinances, regulations or laws.

(b) Necessary modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated in order to:

(1) Protect environmental quality;

(2) Assure safe and reliable operation of the facility; and

(3) Comply with applicable standards, ordinances, regulations or laws.

(c) Unless the commission finds that such provisions would result in greater adverse effect on the environment or would be infeasible, specific provisions to meet the objectives of the California Coastal Act, as may be specified in a report submitted by the California Coastal Commission pursuant to Section 30413(d) of the Public Resources Code, or to meet the requirements of Division 19 (commencing with § 29000) of the Public Resources Code or Title 7.2 (commencing with § 66600) of the Government Code as may be specified in the report

submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code.

(d) With respect to controlling population density in areas surrounding the proposed facilities, proposed findings on each of the following:

(1) Whether existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facilities which will ensure the public health and safety;

(2) Whether, in the case of a nuclear generating facility, the area and population density criteria specified by the United States Nuclear Regulatory Commission for assuring public health and safety are sufficiently definitive for valid land use planning requirements; and

(3) Whether the commission should require as a condition of certification that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in areas surrounding the facilities in order to control population densities and to protect public health and safety.

(e) With respect to any facility to be located in the coastal zone or any other area with recreational, scenic, or historic value, proposed findings and conditions relating to the area that shall be acquired, established, and maintained by the applicant for public use and access; and with respect to any facility to be located along the coast or shoreline of any major body of water, proposed findings and conditions on the extent to which the proposed facility shall be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

(f) With respect to any of the following areas:

(1) State, regional, county or city parks;

(2) Wilderness, scenic, or natural reserves;

(3) Areas for wildlife protection, recreation or historic preservation;

(4) Natural preservation areas in existence as of January 7, 1975;

(5) Estuaries in an essentially natural and undeveloped state; Findings and conclusions on whether the facility will be consistent with the primary land use of the area; whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects; and whether the approval of the public agency having ownership or control of the land has been obtained.

(g) With respect to any facility to be sited in a coastal zone location designated by the California Coastal Commission pursuant to Section 30413(b) of the Public Resources Code, or in a location designated by the Bay Conservation and Development Commission pursuant to subdivision (b) of Section 66645 of the Government Code, findings on whether the approval of the public agency having ownership or control of the land has been obtained, and findings of the California Coastal Commission or the BCDC, respectively, on each of the following:

(1) Whether the facility will be consistent with the primary land use of the area; and



(2) Whether the facility, after consideration of feasible mitigation measures, will avoid any substantial adverse environmental effects;

(h) Where a nuclear powered facility is proposed, findings on;

(1) Whether and when the facility will require reprocessing of nuclear fuel rods or off-site storage of such fuel rods in order to provide continuous onsite fuel core reserve storage capacity; and

(2) Whether and when facilities with adequate capacity to reprocess nuclear fuel rods, if such reprocessing is required, and facilities with adequate capacity to store such fuel, if such storage is approved by an authorized agency of the United States, are or will be in actual operation at the time the nuclear powered facility requires such reprocessing or storage.

(i) Provisions for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(j) Findings on the extent to which the applicant has complied with the recommended minimum standards of efficiency for operation of the facility, approved pursuant to Section 25402(d) of the Public Resources Code.

(k) With respect to any facility which does not comply with an applicable state, local or regional standard, ordinance or law, findings and conclusions on whether the noncompliance can be corrected or eliminated; and if such noncompliance cannot be corrected, findings on both the following:

(1) Whether the facility is required for public convenience and necessity; and

(2) Whether there are no more prudent and feasible means of achieving such public convenience and necessity.

(l) Any other findings and conclusions relevant to the commission's decision.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25523 and 25525-25529, Public Resources Code.

### **§ 1752.3. Presiding Member's Proposed Decision; Air Quality Findings.**

(a) The presiding member's proposed decision shall include findings and conclusions on conformity with all applicable air quality laws, including required conditions, based upon the determination of compliance submitted by the local air pollution control district.

(b) If the determination of compliance concludes that the facility will comply with all applicable air quality requirements, the commission shall include in its certification any and all feasible conditions necessary to ensure compliance. If the determination of compliance concludes that the proposed facility will not comply with all applicable air quality requirements, the commission shall direct its staff to meet and consult with the agency concerned to attempt to correct or eliminate the noncompliance.

(c) If the noncompliance cannot be corrected or eliminated, the commission shall determine whether the facility is required for the public convenience and necessity and whether there are not more prudent and feasible means of achieving such public convenience and necessity. In such cases, the commission shall require compliance with all provisions and schedules required by the Clean Air Act and compliance with all applicable air quality requirements which in the judgment of the commission, can be met.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25523(d) and 25525, Public Resources Code.

#### **§ 1752.5. Presiding Member's Proposed Decision; CEQA Findings.**

The presiding member's proposed decision shall contain the committee's responses to significant environmental points raised during the application proceeding.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.1, 25523 and 25541.5, Public Resources Code.

#### **§ 1752.7. Presiding Member's Proposed Decision; Findings for a Multiple Facility Site.**

With respect to any application for a facility to be located on a potential multiple facility site, as determined pursuant to Section 25516.5 of the Public Resources Code, the presiding member shall make the findings specified in Public Resources Code Section 25524.5.

#### **§ 1753. Revised Presiding Member's Proposed Decision.**

After the conclusion of the comment period on the presiding member's proposed decision, the presiding member, in consultation with the other committee member, may prepare a revised proposed decision on the application. If a revised proposed decision is prepared, it shall be forwarded to the full commission and distributed to all parties, interested agencies, and to any person who requests a copy for a minimum 15-day comment period before consideration by the full commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25519(c), 25522 and 25523, Public Resources Code.

#### **§ 1754. Hearings on Presiding Member's Proposed Decision.**

(a) Adoption hearings on the presiding member's proposed decision or the revised proposed decision, if any, shall be held before the full commission after the comment period on the presiding member's proposed decision. The hearing shall be conducted for the purpose of considering final oral and written statements of the parties and final comments and recommendations from interested agencies and members of the public. The hearing(s) on the presiding member's proposed decision may be the same hearing as the one to consider the final decision. If a revised decision is issued as provided in Section 1753, the presiding member may schedule additional hearing(s) before either the committee or the full commission prior to or at the same time as the final commission adoption hearing.

(b) The chairman may require that certain statements by parties and other persons be submitted in writing in advance of the hearings. The commission shall not consider new or additional evidence at the hearings under this section unless due process requires or unless

the commission adopts a motion to reopen the evidentiary record. In such case, the commission shall afford such notice to the parties as is fair and reasonable under the circumstances.

(c) Any member may propose an alternative decision, including supporting findings and conclusions. Such alternative may also be considered at the hearings under this section but need not be acted upon until the commission makes its final decision.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25522, Public Resources Code.

#### **§ 1755. Final Decision.**

(a) At the conclusion of the hearings under Section 1754, the commission shall adopt a final written decision in conformity with Public Resources Code Section 25523.

(b) The decision shall not certify any facility considered in the proceeding unless the commission's findings pursuant to subsections (e), (f), and (k) of Section 1752 are all in the affirmative.

(c) The commission shall not certify any site and related facilities for which one or more significant adverse environmental effects have been identified unless the commission makes both of the following findings:

(1) With respect to matters within the authority of the commission, that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects identified in the proceeding.

(2) With respect to matters not within the commission's authority but within the authority of another agency, that changes or alterations required to mitigate such effects have been adopted by such other agency, or can and should be adopted by such other agency.

(d) If the commission cannot make both the findings required under subsection (c), then it may not certify the project unless it specifically finds both of the following:

(1) That specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the application proceeding; and

(2) That the benefits of the project outweigh the unavoidable significant adverse environmental effects that may be caused by the construction and operation of the facility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 21080.1, 21081, 25216.3, 25523, 25525-25527, 25529 and 25541.5, Public Resources Code; Title 14, California Code of Regulations, sections 15091 and 15093.

#### **§ 1757. Multiple-Facility Sites, Review Schedule.**

(a) Review of an application for an additional facility at a potential multiple facility site shall be conducted in conformity with Public Resources Code Section 25520.5.

(b) The commission shall commence public hearings no later than 60 days after acceptance of the application and conclude such hearings no later than 150 days after the acceptance.

(c) The commission shall issue its decision on the matters under reconsideration within 180 days from the acceptance of the application.

(d) Upon an affirmative decision pursuant to this section, the commission shall follow the procedures and schedules for review of the application as provided in this article and Article 1.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25520.5, Public Resources Code.

#### **§ 1765. Projects Exempted from Notice Requirements; Application Procedures.**

At the hearings specified in section 1748 on an application exempt from the notice requirements pursuant to Public Code section 25540.6, the parties shall present information on the feasibility of available site and facility alternatives to the applicant's proposal which substantially lessen the significant adverse impacts of the proposal on the environment. The presiding member shall use the determinations, findings, and conclusions available from any generic proceedings on the commercial availability of technologies to determine which alternatives merit consideration in the hearings, which require preliminary showings as to their commercial availability, and which require resolution of issues affecting their feasibility.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25540.6, Public Resources Code.

#### **§ 1768. Notice of Decision; Filing with Resources Agency.**

The executive director shall file a notice of the final decision with the Secretary of the Resources Agency.

Note: Authority cited: Section 25541.5, Public Resources Code. Reference: Sections 21080.5 and 25541.5, Public Resources Code.

#### **§ 1769. Post Certification Amendments and Changes.**

##### **(a) Project Modifications**

(1) After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed modifications, including new language for any conditions that will be affected;

(B) A discussion of the necessity for the proposed modifications;

(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;

(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;

(E) An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts;

(F) A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;

(G) A discussion of how the modification affects the public;

(H) A list of property owners potentially affected by the modification; and

(I) A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.

(2) Within 30 days after the applicant files a petition pursuant to subsection (a)(1) of this section, the staff shall review the petition to determine the extent of the proposed modifications. Where staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable laws, ordinances, regulations, or standards, no commission approval is required and the staff shall file a statement that it has made such a determination with the commission docket and mail a copy of the statement to each commissioner and every person on the post-certification mailing list. Any person may file an objection to staff's determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.

(3) If staff determines that a modification does not meet the criteria in subsection (a)(2), or if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2), the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing. The commission shall issue an order approving, rejecting, or modifying the petition at the scheduled hearing, unless it decides to assign the matter for further hearing before the full commission or an assigned committee or hearing officer. The commission may approve such modifications only if it can make the following findings:

(A) the findings specified in section 1755 (c), and (d), if applicable;

(B) that the project would remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code section 25525;

(C) that the change will be beneficial to the public, applicant, or intervenors; and

(D) that there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not known and could not have been known with the exercise of reasonable diligence prior to Commission certification.

(4) The staff shall compile and periodically publish a list of petitions filed under this section and their status.

(b) Change in Ownership or Operational Control

(1) A petition to transfer ownership or operational control of a facility shall contain the following information:

(A) a discussion of any significant changes in the operational relationship between the owner and operator;

(B) a statement identifying the party responsible for compliance with the commission's conditions of certification; and

(C) a statement verified by the new owner or operator in the same manner as provided in Section 1707 that the new owner or operator understands the conditions of certification and agrees to comply with those conditions.

(2) The commission may approve changes in ownership or operational control after fourteen days notice.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25523, 25532 and 25534, Public Resources Code.

**§ 1770. Compliance Verification.**

(a) The Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards for all projects certified. A compliance plan shall be adopted by the commission as part of the certification decision. The plan shall include the following:

(1) A set of general compliance conditions setting forth and explaining the duties and responsibilities of the staff, the licensee, delegate agencies, and others; the procedures for settling disputes; the requirements for handling confidential records and maintaining the compliance record; and the requirements for verification, including periodic reports and any other administrative procedures that are necessary to verify that all the conditions will be satisfied.

(2) Condition(s) or mitigation measure(s) to be monitored;

(3) Method of monitoring or reporting including who will monitor or report, provisions for approving qualifications of the monitor, when the monitoring or reporting will be done, and the frequency of site visits, if any.

(b) To the extent permitted by law, the Commission may delegate authority for compliance verification to state and local agencies which have expertise in subject areas where conditions of certification have been established. Such agencies may include the local building department and the local air quality management district.

(c) If a delegate agency is unwilling or unable to participate in this program, the Commission staff shall establish an alternative method of verification.

(d) The verification provisions in a siting decision are intended to verify compliance with the actual conditions of certification. The staff, after notice to the licensee, may modify the verification provisions as necessary to enforce the conditions of certification without requesting an amendment to the decision, provided that the verification change does not conflict with the conditions of certification. If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.

Note: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.  
Reference: Sections 25523, 25525, 25532 and 25534, Public Resources Code.

#### **Article 4. Additional Provisions Applicable to Geothermal Notices and Applications**

##### **A. General Provisions**

##### **§ 1801. Applicability of Regulations.**

Except as otherwise provided in this article, the provisions of Articles 1, 2, and 3 of this subchapter shall apply to the consideration of all notices and applications for geothermal power plants, associated transmission lines, and appurtenant facilities.

Note: Authority cited: Sections 25213, 25218(e), 25539 and 25541.5, Public Resources Code.  
Reference: Sections 25540 and 25540.5, Public Resources Code.

##### **§ 1802. Policies of the Commission on the Siting of Geothermal Power Plants.**

In carrying out the provisions of this article it shall be the policy of the commission:

(a) To promote the accelerated development of economically feasible and environmentally acceptable geothermal power plants;

(b) To implement a 12-month certification process for the consideration of geothermal applications for projects for which a resource supply has been confirmed;

(c) To enhance public participation in decisions relating to the development of geothermal energy in California to ensure a thorough and balanced consideration of relevant issues;

(d) To assist and cooperate with local permitting agencies in the preparation of environmental documents relating to geothermal power plants, to encourage local agencies to prepare full-field environmental impact reports at the earliest practical time, to provide such agencies with technical and financial assistance wherever possible in the preparation of such reports; and

(e) To avoid the duplication of environmental analyses by coordinating with local, state, and federal agencies in the preparation of environmental documents, including the use of documents prepared by such agencies to the extent practicable.

Note: Authority cited: Sections 25218(e) and 25541.5 Public Resources Code. Reference: Sections 25540-25540.3 and 25540.5, Public Resources Code.

### **§ 1803. Alternative Certification Processes for Geothermal Power Plants.**

(a) Eighteen-month certification process. The commission shall issue its decision on a geothermal notice as specified in Section 1727 of Article 2 within nine months from the date of accepting such notice, and except as provided in subsection (b), shall issue its final decision on an application within nine months from the date of acceptance of the application, or at such later times as are mutually agreed upon by the commission and the applicant.

(b) Twelve-month certification process. If the applicant can demonstrate at the outset of the proceedings that the project complies with the provisions of Public Resources Code Section 25540.2(a), the commission shall issue its decision within 12 months of the acceptance of the application. Any application filed pursuant to Public Resources Code Section 25540.2(a) shall explicitly state that a commercial resource has been discovered and that a 12-month process is requested.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540, 25540.2(a) and 25540.3, Public Resources Code.

### **§ 1804. Special Geothermal Definitions.**

In addition to the definitions contained in Section 1702 and unless otherwise indicated, the following definitions shall apply to this article.

(a) "Commercial quantities of a geothermal resource" means enough geothermal steam or hot water resources from a sufficient number of wells to support a reasonable conclusion that a proposed power plant will be able to achieve the applicant's estimated gross capacity over the life of the project.

(b) "Full-field environmental impact report" means an environmental impact report which considers in detail the impacts of the development of a geothermal field, as defined by the resource developer, including but not limited to the construction of well pads, the drilling and operation of geothermal wells, and the construction and operation of geothermal resource conveyance lines, and which generally considers the construction, operation, and maintenance of one or more geothermal power plants within such geothermal field.

(c) "Geothermal field" means the geographic area containing the wells that supply steam and/or hot water to one or more geothermal power plants proposed in a notice or application.

(d) "Geothermal power plant" means any thermal power plant, as defined under Section 25120 of the Public Resources Code, which uses geothermal resources as the principal energy source for the generation of electrical power.

(e) "Twelve month process" means the consideration, and the granting or denial of the certification, within 12 months from the filing of an application for a geothermal plant for which no notice is required pursuant to Public Resources Code Section 25540.2(a).



(f) "KGRA" means Known Geothermal Resource Area as defined by the United States Geological Survey.

(g) "Plant maturation period" means the initial break-in period for a geothermal power plant which includes the period from commencement of operation to the time required to achieve the anticipated capacity factor.

(h) "Reconnaissance survey" means a survey as defined by the Federal Power Commission in *Archaeological and Historical Investigation for Energy Facilities: A State of the Art*, 1977.

(i) "Resource conveyance line" means the pipelines that transport the steam and/or hot water from the well to the geothermal power plant or from the power plant to a holding pond for reinjection.

(j) "Thermal spring" means any natural or artificial spring outlet whose average temperature is at least 15° F above the mean annual temperature of the air at the same locality.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540-25540.4, Public Resources Code.

#### **§ 1809. Determination of Availability of Commercial Resource.**

(a) Within thirty (30) days of the filing of an application pursuant to Public Resources Code Section 25540.2(a) and Section 1803 of these regulations, the committee shall hold a hearing for the sole purpose of determining whether the proposed site is reasonably capable of supplying geothermal resources in commercial quantities. Such hearing shall be publicly noticed.

(b) The applicant shall present testimony, studies or other evidence in support of its contention that sufficient geothermal resources have been confirmed at the site. The staff shall also present its evaluation of the site's resource capabilities.

(c) The California Division of Oil and Gas (DOG) shall be requested to review the application and all well records filed with the division concerning wells completed at the site, and shall be requested to present at the hearing its conclusions, based on the professional experience of its personnel, as to whether the site is reasonably capable of providing geothermal resources in commercial quantities.

(d) If the commission determines that the site is reasonably capable of providing geothermal resources in commercial quantities, the application shall be processed in accordance with Section 1803(b) of these regulations.

(e) If the commission determines that the site is not reasonably capable of producing geothermal resources in commercial quantities, or that the applicant has failed to demonstrate that the site is reasonably capable of producing geothermal resources in commercial quantities, the applicant may withdraw the application or request that the application be treated as a notice filed pursuant to Section 1803(a). The document shall, as of the date such request is granted, be processed in accordance with Sections 1806 and 1807.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Sections 25540.1 and 25540.2(b), Public Resources Code.

## **B. Delegation of Geothermal Power Plant Siting Authority to Local Government**

### **§ 1860. Policy and Purpose.**

(a) General. Pursuant to Section 25540.5 of the Public Resources Code, the commission is permitted to delegate its siting authority over geothermal power plants and related facilities to county governments which have adopted geothermal elements to their general plans.

(b) Policy. It is the policy of the California Energy Commission to delegate its geothermal power plant siting authority to county governments which have demonstrated a capability to expeditiously process applications for geothermal power plants and/or geothermal field development projects, provided, however, that such county governments have formally adopted policies which are consistent with adopted policies of the commission with respect to the development of geothermal resources for the generation of electrical energy.

(c) Purposes. Delegation of the commission's geothermal power plant siting authority to county governments will maximize local control over development projects whose impacts are peculiarly local. The provisions of this article will ensure that local exercise of such control will occur in a manner that is consistent with the state's interests in a reliable supply of electrical energy and environmental maintenance. Further, a delegation pursuant to this article will vest permitting authority over both the geothermal field and the geothermal power plant in a single agency, thus allowing a consolidated review of all aspects of a geothermal project.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

### **§ 1861. Counties Eligible to Petition for Delegation of Authority.**

(a) Any county government which has adopted a geothermal element to its general plan may petition the commission for delegation of the commission's exclusive authority to certify geothermal power plants and related facilities vested in Section 25500 of the Public Resources Code.

(b) Two or more counties, each of which has adopted a geothermal element to its general plan and which have executed a joint powers agreement or its equivalent for the administration of such geothermal power plant siting authority as may be delegated by the commission, may jointly petition the Energy Commission for delegation of its exclusive authority to site its geothermal power plants and related facilities.

(c) Upon the delegation of geothermal power plant siting authority by the Energy Commission, the county government or governments which have petitioned for such delegation shall be exclusively responsible for administering and deciding upon all applications for geothermal power plants and related facilities which are wholly located within the territorial jurisdiction of the petitioning county or counties until such time as the authority delegated pursuant to this article shall have been revoked pursuant to the provisions of Section 1870.

(d) The provisions of this section shall not apply to any application for a geothermal power plant and related facilities which are not wholly located within the territorial jurisdiction of such counties that have been delegated siting authority pursuant to the provisions of this article. Applications for such facilities shall be filed with the commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1862. Contents of Petition.**

Every petition filed pursuant to Section 1861 shall contain all of the following:

(a) A resolution approving and directing the submission of the petition adopted by the county board of supervisors;

(b) A copy of the geothermal element and the date of adoption;

(c) A written statement from the Governor's Office of Planning and Research that the geothermal element complies with the office's guidelines and/or criteria for geothermal elements;

(d) A description of the policy statements contained in the geothermal element with respect to the development of geothermal resources for the generation of electrical energy;

(e) A description of the procedures contained in the geothermal element for the implementation of the policies expressed in the element, and a discussion of the status of such implementation;

(f) A complete and detailed description of the program that the county seeks to have designated as an equivalent certification program for the orderly and efficient review of geothermal power plant applications. Such description shall indicate the manner in which the program complies with each of the requirements set forth in Section 1863 below;

(g) A detailed description of the procedures that will be employed to comply with the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.);

(h) The level of staffing required to carry out the responsibilities delegated pursuant to this article;

(i) A discussion of any additional staffing required by the administering agency, including job descriptions and duration of need;

(j) A discussion of funding required by the administering agency to process applications in accordance with the provisions of this article; and

(k) Such additional information as the county desires to submit.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

### **§ 1863. Equivalent Certification Program Requirements.**

No county program shall be designated as an equivalent certification program unless it contains provisions for all of the following:

- (a) Certification of geothermal areas as multiple facility sites, if so applied for;
- (b) Distribution of all applications to the commission and to each federal, state, and local agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities, as well as provisions for receipt of and response to the comments and recommendations of each such agency;
- (c) Preparation and distribution of a written decision on each power plant application. Such written decision shall contain each of the findings and conclusions required by Sections 1752-1753 of these regulations, and shall be based on the formal record of the proceeding;
- (d) Public hearings, including provisions for adjudication of disputed issues of fact through testimony taken under oath and refutation by cross-examination;
- (e) Formal intervention by any person with a legally recognizable interest in the outcome of the proceedings;
- (f) Timely and orderly amendment of the program to reflect changes in law or commission certification requirements;
- (g) Administration of and decision upon geothermal power plant applications within 12 months of the filing of such applications; and
- (h) Appeal to the commission on any aspect of the decision of the county.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

### **§ 1864. Commission Staff Analysis.**

- (a) The commission and its staff may participate in an aspect of county proceedings on an application for a geothermal power plant and related facilities if such application would have been filed with the commission but for the delegation of authority pursuant to this article.
- (b) The Commission staff shall assist the county in assembling a record adequate to support findings on each of the following:
  - (1) Conformity of the site and related facilities with the 12-year forecast of statewide and service area electric power demands adopted pursuant to Section 25309(b) of the Public Resources Code; and
  - (2) Necessary modifications, mitigation measures, conditions or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, constructed and operated in order to assure reliability of operation, safety and environmental protection.

(c) The county may submit a written request for staff assistance in the technical evaluation of any issue presented in the proceedings, or in the conduct of the proceedings on the application. Staff may render such assistance as it deems appropriate, provided however, that it shall indicate in writing its intention to do so within fifteen (15) days of the receipt of the county's request.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1865. Air Quality Determinations.**

Whenever any county is administering an application for a geothermal power plant and related facility pursuant to authority delegated by the commission, the air pollution control officer shall prepare and submit to such county its determination of compliance as specified in Section 1744.5 within 180 days of the acceptance of the application.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1866. Record of Proceedings.**

The county counsel shall be responsible for ensuring the preparation of a record adequate to support all required findings and conclusions.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1867. Commission Action on Petition.**

(a) Within twenty (20) days of the filing of a petition pursuant to Section 1861, the executive director shall determine whether the petition contains the information specified in Section 1862.

(1) If the executive director determines that the petition is complete, he or she shall so certify in writing and shall inform the petitioner.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner with a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(b) Unless the petition has been returned pursuant to (a)(2) above, the commission shall, within sixty (60) days of the filing of the petition, convene two hearings to allow representatives of the county to explain each aspect of its proposed equivalent certification program, and to allow any interested party to offer testimony or comments. One (1) of the hearings shall be in the petitioner's county seat, and one (1) of the hearings shall be in the state capital, except where the petitioner's county seat is the state capital, in which case only one (1) such hearing, in the state capital, shall be required. There shall be no less than ten (10) nor more than forty-five (45) days, exclusive, between the dates of the two hearings. Such hearings shall be publicly noticed, and any person shall be entitled to offer testimony or comments.

(c) Within thirty (30) days of the conclusion of the hearing convened pursuant to (b) above, the commission shall issue its decision as to whether the county's program shall be designated as an equivalent certification program. The commission's decision shall include findings on the compatibility of commission and county policies pertinent to geothermal energy development, and on the county's technical and financial ability to carry out the responsibilities which may be delegated by the commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1868. Appeals to Commission.**

(a) Any party to county proceedings conducted pursuant to authority delegated by the commission may, within 30 days of the issuance of the county's written decision, or within 30 days of the disposition by that county of an appeal filed pursuant to county ordinances, appeal any aspect of the county decision to the commission.

(b) The appeal shall specify the bases therefore, and shall include a succinct summary of the evidence received by the county pertinent to the issues appealed, and shall specify the relief requested.

(c) The appeal shall include a copy of the administrative record of the county which has been certified by the county as complete.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1869. Commission Action on Appeals.**

(a) The commission shall, within 60 days of filing of the appeal, convene a hearing for the presentation of arguments on the appeal. In reviewing a factual issue, the commission shall determine whether, in light of the whole record, the record contains substantial evidence to support that aspect of the county decision which has been appealed.

(b) If the commission finds for the appellant, it shall take such action as it deems appropriate, including, but not limited to:

- (1) Returning the case to the county for further proceedings as may be directed; or
- (2) Conducting further evidentiary hearings before the commission; or
- (3) Removing the case from the county for disposition by the commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

#### **§ 1870. Revocation of Delegation.**

(a) The commission may, after public hearings, revoke its approval of a county's equivalent certification program whenever it finds that such program does not comply with

current statutory requirements, duly adopted regulations of the commission, or that the program is not being effectively and efficiently administered.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25540.5, Public Resources Code.

## **Article 5. Small Power Plant Exemptions**

### **§ 1934. Statement of Purpose.**

It is the policy of the State Energy Resources Conservation and Development Commission to promote the development of electric energy supply technologies that prudently conserve and economically use energy resources. A major purpose of these regulations is to encourage the use of those technologies by expediting the procedures necessary for the approval and development of alternate sources of electric generation.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1936. Filing Applications for Exemption.**

Any person who proposes to construct a thermal power plant with a generating capacity not exceeding 100 megawatts, or proposes a modification to an existing thermal power plant which will add generating capacity not exceeding 100 megawatts may apply for an exemption from the provisions of Chapter 6 of Division 15 of the Public Resources Code.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1940. Notice of Application.**

(a) Upon receipt of an application the executive director in conjunction with the public adviser shall immediately take action to cause notice of the application and its date of receipt to be published in the commission's next meeting agenda and distributed to the public at large.

(b) The executive director shall transmit copies of the application to each member and ex officio member, the commission general counsel, the public adviser, the hearing officer, the Attorney General and all other persons who have requested in writing that a copy be provided.

(c) The executive director shall also transmit copies of the application to all federal, state, regional, and local agencies which have an interest in the matter and shall request that these agencies submit their written comments and recommendations on the application. Such comments shall be filed with the executive director no later than the date of the first hearing held pursuant to Section 1944 of these regulations.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1943. Presentation of Evidence.**

All testimony together with any other relevant documentary evidence, such as any environmental impact documentation or other environmental document prepared by the lead agency, may be offered by any party and shall be filed with the Docket Unit no later than seven (7) days prior to the hearing at which such testimony is to be offered, or at such other time as ordered by the presiding member.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1944. Hearings.**

A committee shall be appointed pursuant to Section 1204(a) to handle the proceedings. A hearing officer may also be appointed to assist the committee in the conduct of the proceeding.

The presiding member shall set the time and place for hearings, conferences, and site visits pursuant to this Section provided, however, that hearings on the application shall commence no later than one hundred (100) days after the filing of the application.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1945. Final Argument and Decision.**

(a) After the hearings conducted pursuant to Section 1944 of these regulations, the committee shall prepare a proposed decision on the application. The proposed decision shall be distributed to the members, ex officio members, general counsel, the public adviser, the applicant, all intervenors, and any other persons designated by the presiding member.

(b) Within twenty-one (21) days after publication of the proposed decision, a hearing shall be held before the full commission for final arguments on the formal record of the proceedings. After the hearing, the commission shall adopt, or amend and adopt, the proposed decision, which shall thereupon become final. The final decision shall be rendered within one hundred thirty-five (135) days after the filing of the application or at such later time as deemed necessary to permit full and fair examination of the issues.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **§ 1946. Content of Decision.**

(a) The decision on the application shall either approve or disapprove the application and shall include a statement of reasons supporting the decision. The decision shall include, in the affirmative or negative, the findings required by Public Resources Code Section 25541.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25541, Public Resources Code.



## **§ 1947. Modifications of Deadlines.**

The applicant may at any time stipulate to a more lengthy time schedule than is provided in these regulations in order to permit full and fair exploration. Such stipulation shall be made in writing to the committee.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

## **Article 6. Powerplant and Transmission Line Jurisdictional Investigations**

### **A. Definitions**

#### **§ 2001. Definitions.**

In addition to the definitions found in Chapter 2 (beginning with Section 25100), Division 15, Public Resources Code and the definitions found in Section 1702 of this chapter, the definitions contained in this article shall apply to all commission determinations of megawatt capacity thresholds, including the 50 megawatt jurisdictional threshold, the 100 megawatt threshold for a small powerplant exemption, and the 300 megawatt threshold for a small powerplant exemption, and the 300 megawatt threshold for a cogeneration or solar thermal powerplant exemption from the notice of intention requirement.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

#### **§ 2003. Generating Capacity.**

(a) The "generating capacity" of an electric generating facility means the maximum gross rating of the plant's turbine generator(s), in megawatts ("MW"), minus the minimum auxiliary load.

(b) The "maximum gross rating" of the plant's turbine generator(s) shall be determined according to this subdivision. If there is more than one turbine generator, the maximum gross rating of all turbine generators shall be added together to determine the total maximum gross rating of the plant's turbine generator(s).

(1) The maximum gross rating of a steam turbine generator shall be the output, in MW, of the turbine generator at those steam conditions and at those extraction and induction conditions which yield the highest generating capacity on a continuous basis.

(2) The maximum gross rating of a combustion turbine generator shall be the output, in MW, of the turbine generator at average operating site conditions, with the proposed fuel type, and at those water or steam injection flow rates, which yield the highest generating capacity on a continuous basis.

(A) The average dry bulb temperature and relative humidity of the inlet air at the plant site shall be calculated using 10-year data for temperature and relative humidity from the nearest meteorological data point, using the most recent published data from the American

Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), the National Oceanographic and Atmospheric Administration (NOAA), the U.S. Air Force, or commercial airport weather stations.

(B) The barometric pressure at the site shall be one standard atmosphere, corrected for actual site elevation.

(3) The maximum gross rating cannot be limited by an operator's discretion to lower the output of the turbine generator(s) or by temporary design modifications that have no function other than to limit a turbine generator's output.

(4) The maximum gross ratings specified in the overall plant heat and mass balance calculations shall be subject to verification by commission review of the steam or combustion turbine generator manufacturer's performance guarantee, specifications and procurement contract, if available.

(c) The "minimum auxiliary load" means the electrical rating (in MW) of the sum of the minimum continuous and the average intermittent on-site electrical power requirements necessary to support the maximum gross rating as defined in subsection (b) of this regulation and which are supplied directly by the power plant. For geothermal projects, the minimum auxiliary load includes the minimum electrical operating requirements for the associated geothermal field which are necessary for and supplied directly by the power plant. Discretionary loads, i.e., those which can be curtailed without precluding power generation, are not included in minimum auxiliary loads.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Sections 25110, 25120, 25123, 25500 and 25517, Public Resources Code.

## **B. Expedited Clearance Process**

### **§ 2010. Petition for Expedited Clearance; Filing.**

(a) In lieu of filing a request for a jurisdictional determination pursuant to Section 1230 et seq., the owner or operator of a proposed powerplant may file a petition requesting expedited clearance of the proposed powerplant on the basis that it has a generating capacity less than 50 MW. The purpose of this expedited clearance process is to resolve jurisdictional issues involving the definition of generating capacity under Section 2003. All other jurisdictional issues must be processed under Section 1230 et seq.

(b) All petitions for expedited clearance must be filed with the Docket Unit in accordance with Section 1209 and shall include, but not be limited to, the following information:

(1) a description of the exact location of the proposed powerplant;

(2) a description of the ownership and control of the proposed powerplant;

(3) the generating capacity of the proposed powerplant, including detailed equipment and operation design specifications and auxiliary loads necessary to determine the generating capacity under section 2003;

- (4) the schedule for developing the proposed powerplant;
- (5) the name, address, and telephone number of the person or persons responsible for reporting the information;
- (6) a power sales agreement, if available, showing the amount of power to be sold from the project, and to whom the power is being sold;
- (7) a declaration dated and signed under penalty of perjury by the petitioner or in the case of a corporation or business association by an authorized officer thereof that the facts stated in the petition are true and correct;
- (8) the date on which the petition is filed; and
- (9) other information relevant to the issue of generating capacity.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

#### **§ 2011. Notice of Petition for Expedited Clearance.**

(a) Within 14 days after a petition is filed, the Executive Director shall determine whether the petitioner has filed all of the information required in section 2010. If the petition is incomplete, the Executive Director shall specify the items required to make the petition complete.

(b) Within 14 days after the petition is determined to be complete, the Executive Director shall provide notice of the filing of the petition in the agenda prepared for regularly scheduled commission meetings pursuant to Sections 1103 and 1104.

(c) The Public Adviser shall ensure that adequate notice is given to the public of all petitions filed under this article.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25214, 25222 and 25500, Public Resources Code

#### **§ 2012. Clearance Order.**

(a) If no complaint or request for a jurisdictional determination pursuant to Section 1231 is filed within thirty (30) days after distribution of the agenda containing the notice of filing of the petition, then a clearance order shall be placed on the consent calendar for the next available commission meeting, subject to the limitation in subdivision (b) below.

(b) If the proposed powerplant is not constructed and operated substantially in conformance with the description provided by the owner or operator in the petition for expedited clearance, then the commission may, on its own motion or upon the motion of any person, reconsider its jurisdiction over the powerplant.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25110, 25120, 25123, 25210, 25500 and 25517, Public Resources Code.

## **Appendix A**

### **Information Requirements for a Nongeothermal Notice of Intention**

(a) In a section entitled "Project Description," the notice shall contain:

(1) A brief, summary description of the alternative site and related facility proposals, including the general location of each site or potential transmission corridor; the type, size, and capacity of the generating or transmission facilities; fuel, water supply, pollution control systems and other general characteristics. The description shall indicate precisely what sites and related facilities the applicant proposes to have approved by the commission.

(2) A proposed time schedule outlining the applicant's estimates for obtaining regulatory approvals, starting and completing construction, initial start up, and full-scale operation of the proposed facilities.

(b) In a section entitled "Need for Facilities," the notice shall contain:

(1) A summary description outlining the reasons why the applicant believes that new or additional facilities should be added to the applicant's electrical system, indicating whether the facilities are being proposed to meet projected capacity or energy deficits, to displace existing units scheduled for retirement, to meet requirements for additional reserves, or other justification for proposing new or additional capacity.

(2) A table showing the expected capacity and energy levels, adopted by the commission pursuant to Section 25309 of the Public Resources Code, for the general period in which the facilities are proposed. Where appropriate, include a table of, and explanation for, any adjustments to the adopted capacity and energy levels which are necessary to derive the applicant's service area requirements.

(3) A discussion indicating the amount or percentage of reserve capacity which the applicant believes is appropriate, including a description of the controlling criterion for determining the reserve margin, a discussion of why the applicant believes the indicated reserve margin is appropriate, and a discussion of how the indicated margin was derived.

(4) A table and summary description of the generating resources and electricity supplies which are likely to be available to the applicant's service area in the general time period proposed for initial operation of the facilities, including an explicit identification of transfer capabilities from outside the service area, and a summary of facilities operated or proposed by the applicant or by other entities within the service area.

(5) A discussion identifying and explaining any major uncertainties, such as delays in the construction or licensing of major planned resources or uncertainty with respect to contractual arrangements for transfer capabilities, which may affect the need for the proposed facilities.

(6) Tables showing the capacity and energy balances, projected deficits or excesses, and resulting reserve margins which reflect the applicant's expectations for electricity supply and demand within the general period for which the facilities are proposed.

(7) If the need is based in whole or in part on the proposed retirement or displacement of existing facilities, a discussion identifying such facilities and briefly explaining the reasons for their proposed retirement or displacement.

(8) If the need is based on factors other than projected capacity or energy deficits (taking into account reserve requirements), a discussion of the basis for the need and its conformance with the forecast assessment and any other criteria for determining need adopted in the most recent biennial report. If the need is based upon contingency planning, an explicit discussion of the nature and impact of the possible contingencies and their likelihood, an indication of when it may be determined whether the contingencies will or will not occur, and a schedule showing the earliest (or latest, if appropriate) date on which the proposed facilities should be operating given the possible contingencies.

(c) In a section entitled "Selection of Facilities," the notice shall contain:

(1) A discussion of the reasons why the principal generating technology was chosen from among those technologies most recently determined as commercially available by the commission pursuant to Public Resources Code Section 25309(j). Indicate the effect, if any, of the following factors on the selection of the facility type: comparative economics, comparative reliability, comparative health and safety aspects or environmental impacts, availability of appropriate sizes, comparative operating flexibility, lead time for approval and construction, and any other factor considered important by the applicant in making the selection.

(2) A discussion of the reasons for selecting the size of the facilities proposed in the notice. Indicate the effect, if any, of the following factors on the selection of facility size: need for capacity or energy; comparative reliability of different sizes, overall impact on system reliability, or reserve requirements of different sizes; comparative safety of different sizes; economies or diseconomies of scale associated with different sizes; commercial availability of different sizes; and other factors considered important by the applicant in the selection.

(3) A summary description of the preliminary design of the proposed facilities, specifically including the power generation, cooling, pollution control, fuel handling, water supply and treatment, safety, emergency, and auxiliary systems; and a summary of the proposed methods of construction and operation.

(d) In a section entitled "General Acceptability," the notice shall contain:

(1) For any technology not previously found to be commercially available as most recently determined by the commission pursuant to Public Resources Code Section 25309(j), a discussion of the reasons why the applicant expects the technology to be available in the time period proposed for the facility.

(2) A discussion of the economic comparability of the proposed facilities based on information available to the applicant on comparative costs of commercially available generating technologies.

(3) A discussion of any significant unresolved technical, environmental, or health and safety or other issues, affecting the ability to use the proposed technologies at each of the sites, which have been identified in the most recent biennial report, or which are otherwise known to the applicant. The discussion should include or refer to any information which the applicant believes is relevant to resolving the question or issues identified.

(4) A summary discussion explaining (with reference to parts (1) through (3) above) why the applicant believes the facilities proposed should be found acceptable.

(e) In a section entitled "Transmission Needs," the notice shall contain:

(1) A description in general terms of any new or additional transmission facilities, powerlines, substations, switchyards, or other transmission equipment, whether or not within the exclusive permit authority of the commission, which the applicant believes will be required to carry electrical power from the proposed power plant at each of the sites presented in the notice to the principal load centers to be served by the new power plant. The information should include all potential corridors under consideration, approximate lengths of each corridor being considered, and a summary of the preliminary estimates of the costs of lines, stations and other equipment that are being considered.

(2) A discussion of the analyses, load-flow studies, or other considerations which the applicant believes justify the need for the additional transmission equipment under consideration, the relative merits of the alternative principal points of junction with the existing transmission system being considered, and the relative merits of the alternative capacity or voltage levels being considered for the proposed power lines.

(3) A discussion of the extent to which the consideration of alternative corridors or proposed capacity and voltage levels has taken or will take into account the future transmission needs created by additional generating facilities planned by the applicant or any other entity proposing generating facilities in the same general area.

(4) A discussion summarizing the principal advantages and disadvantages to the environment of each of the alternative transmission proposals under consideration by the applicant. The discussion shall extend only to the functional point of delivery of the power to the interconnected system, and should include an identification of areas in the vicinity of the proposed corridors where important social, aesthetic, historical, or recreational resources, or scarce, unique, or specially protected resources (including archaeological sites, endangered species, unique recreational areas, and protected biological areas) may be adversely affected. The discussion should indicate the measures being considered by the applicant to avoid or mitigate the principal adverse effects identified in the discussion.

(f) In a section entitled "Safety and Reliability," the notice shall contain:

(1) A preliminary description of any fuels, emissions (except for air quality emissions), wastes, or other toxic or hazardous substances associated with the proposed facility which may have an effect on safety and reliability; a discussion of the principal adverse effects of such substances on safety and reliability; and a discussion of the measures proposed or being considered by the applicant to ensure the safe handling, control, storage, removal, or disposal of such substances.

(2) A discussion of the likelihood that the measures described in part (1) will be able to comply with existing health and safety standards.

(3) A report which describes the seismic, other natural hazards, and man-made hazards associated with each of the proposed sites, discusses the degree to which such hazards could cause secondary hazards at the proposed facilities (e.g., fuel spills, structural collapse, increased emissions including radiological, explosions, etc.) and discusses the alternative levels of design being considered to safeguard safe and reliable operation in light of such hazards. The report should describe special design features being considered to protect against seismic and other potential natural hazards and indicate the relative degrees of safety from such hazards that can be achieved by the design features being considered.

(4) A description of the principal emergency systems and safety precautions proposed or being considered by the applicant, and a discussion of the nature of the hazards for which the systems or precautions are provided. The description need not duplicate the discussion of special design features in part (3) or measures discussed in other parts.

(5) If a nuclear power plant is proposed:

(A) A description of the methods proposed or being considered to prevent illegal diversion of nuclear fuels and waste, and to control density of population in areas surrounding each proposed site.

(B) A description of the facilities upon which the applicant proposes to rely for reprocessing or storage of spent nuclear fuel rods from the nuclear reactor. This description shall include an estimate of the volume of spent fuel generated by the reactor over its design life, the particular technology likely to be utilized for such storage or reprocessing, the anticipated on- or off-site facilities to be utilized, the date on which those facilities have been or are likely to be licensed and in operation, and the anticipated means of transporting and storing the spent fuel rods after removal from the reactor.

(C) A description of the emergency response capabilities that would be required of local communities surrounding each of the proposed sites in order to comply with any provisions of federal or state law in the event of an accidental release of radioactivity from the facilities.

(6) A description of the principal adverse effects on safety and reliability associated with other aspects of the fuel cycle, and which are directly traceable to the proposed facilities.

(g) In a section entitled "System Reliability," the notice shall contain:

(1) A discussion indicating the degree of reliability which the applicant believes the proposed facilities are capable of achieving. The discussion should include an estimate of the expected annual capacity factor for the initial operating years of the facilities and an estimate of the average annual capacity factor over the expected life of the facilities. Estimated capacity factors may be supported by information on forced outage rates and capacity factors actually experienced by comparable facilities elsewhere (if any) or by a discussion of other factors which support the applicant's expectations on reliability where data from actual operating experience of comparable facilities is not readily available. For purposes of this subsection, "comparable facilities" means facilities whose principal generating technology and fuel type, generating capacity, and mode of operation is similar to those of the proposed facilities. The discussion should indicate the basis for reliability expectations for any new or innovative

pollution control, cooling water or other principal systems, even where the reliability of the principal generating technology is considered proven, and should identify any major uncertainties or unproven aspects of such new or innovative systems.

(2) An assessment of the long-term availability of the fuel or fuels proposed for the facilities, at prices consistent with those assumed in subsection (h), and a discussion of the principal uncertainties in providing assurance of a reliable supply of fuel over the expected operating life of the facility. If the facilities are capable of using multiple fuels, the extent of such fuel flexibility should be discussed, along with its impact on long-term reliability. The applicant may discuss the relative merits, costs, and difficulties in initially designing the facility to accept multiple fuels versus modifying the facility for such purposes at a later time.

(3) A discussion of the probable effect of the proposed facilities, including transmission facilities, on the overall reliability of the applicant's service system. The discussion should indicate the effect of the alternative plant sizes or transmission voltage levels being considered on the applicant's determination of "loss of load probability," "largest contingency," or any other reliability criterion or determinant of needed reserve margins.

(h) In a section entitled "Financial Impacts," the notice shall contain:

(1) A discussion of the financial requirements for constructing and operating the proposed facilities, and a table summarizing capital requirements and operating expenses, and their principal components. The discussion should indicate and explain the basis for any assumed escalation rates and costs of capital, fuel, or other principal components. Significant cost differences between alternative sites and facilities should be identified.

(2) A summary of the cost of the installed generating capacity (expressed in \$/KW) and of the cost of supplying energy at the busbar (expressed in ¢H /Kwhr.); a list of principal cost components, an explanation of the source or derivation of each, and the calculations used to arrive at the summary costs above; a discussion of any major uncertainties in the cost figures used or assumptions relied upon.

(3) A discussion of proposed methods for financing the proposal.

(i) In a section entitled "Proposed Sites," the notice shall contain:

(1) The location of each site and related facility proposed in the notice on a location map and described by sections, range, township, and county. The map should also indicate the various transmission corridors under consideration by the applicant and the location of other transmission facilities and equipment being considered and identified pursuant to subsection (e)(1).

(2) Photographic representations adequately depicting the visual appearance of each power plant site and its immediate surroundings.

(3) A brief description of the applicant's legal interest in each power plant site proposed.

(4) A description, including artists drawings, of the proposed location of facilities and structures on each site.



(j) In a section entitled "Site Suitability," the notice shall contain (separate sections may be submitted for each alternative site proposed):

(1) A brief description of the environmental setting for each site, a summary discussion of the general suitability of each alternative site to accommodate the facilities proposed in the notice, and a summary of the principal environmental, economic, and technological advantages and disadvantages of each alternative site.

(2) A preliminary statement of the principal environmental impacts of the proposed facilities at each site on areas of special environmental concern, including, but not limited to areas prohibited as power plant sites pursuant to Section 25527 of the Public Resources Code, areas designated by the Coastal Commission or BCDC or within their jurisdiction, areas identified for potential wilderness designation or other protective designation, and agricultural areas; and a preliminary statement of the principal environmental impacts on biological resources, including especially rare and endangered species, livestock, and crops.

(3) A preliminary statement of the principal environmental impacts on human health which may result from air and water pollutants discharged from the facility, toxic and other hazardous materials stored or used at the site, wastes created by the facility, or any other substance associated with the facility. The statement shall include all regulated pollutants and substances; for nonregulated pollutants and substances, the statement shall include a summary of any findings and conclusions made by the commission in any generic assessment of the health effects of such substances.

(4) A preliminary discussion of the principal impacts on human resources, including major impacts on aesthetic, historical, cultural, archaeological, and recreational resources.

(5) A discussion of the principal social and economic impacts of constructing and operating the facilities at each site on the surrounding communities. The discussion should include anticipated impacts on public institutions such as schools, and on public services, housing, employment and other community resources during construction and the impact on tax bases and other community aspects after construction.

(6) A preliminary discussion indicating the extent to which various measures being considered by the applicant are likely to mitigate the impacts identified under parts (2) through (5).

(7) A general discussion of the compatibility of the proposed facilities with present and expected land uses at each site, including conformity with any long-range land use plans adopted by any federal, state, local, or regional planning agency. The discussion should identify the need, if any, for variances at any of the sites, or any measures that would be necessary to make the proposals conform with permitted land uses.

(8) A description of the principal and alternative (if any) sources of water proposed or being considered by the applicant for power plant cooling and other purposes; a description of the quality of water being considered and a general description of any treatment processes which may be necessary to make the water suitable for cooling or other uses at the site; a description of total amounts of such water that will be required each year and on any given day; a general description of any conveyance systems that will be required to carry the water from its source to the site and return it to a disposal or discharge area; the location and identity of any area being considered for disposal or discharge of water from the site; and a description of

any treatment processes that may be necessary to make the water acceptable for discharge or disposal. The applicant should also describe any other major water facilities, including coolant outfalls, ponds, lakes, or towers, that may be associated with the proposed facilities, and discuss the principal impacts, if any, of these facilities on the physical and human environment.

(9) A land use map which indicates noise sensitive receptors or groups of receptors in the vicinity of the proposed site and related facilities, including anticipated receptors based on future land uses identifiable from public documents at the time of submission.

(k) In a section entitled "Applicable Standards," the notice shall contain:

(1) A list of federal, state, regional, and local agencies and their standards, ordinances, or laws, including long-range land use plans adopted by the state or by any local or regional planning agency, that are applicable to each site and related facility, including those which would be applicable but for the exclusive authority of the commission to certify sites and related facilities. The list should include a brief description of the applicability of such standards, ordinances, laws, or plans for each agency, and citations for each.

(2) To the extent not discussed in previous sections, discussion of the likelihood of the conformity of the proposed facilities with remaining laws, regulations, ordinances and standards of particular importance in assessing the acceptability of the sites and related facilities. Indicate those areas for which conformity with applicable standards cannot be determined at this time and provide a preliminary schedule for the resolution of such remaining issues.

(l) In a section entitled "Air Quality," the notice shall contain:

(1) A project description including typical fuel type and characteristics (BTU content, maximum sulfur and ash content), design capacity, proposed air emission control technologies, stack parameters (assumed height, diameter, exhaust velocity and temperature) and operational characteristics (heat rate, expected maximum annual and daily capacity factor). This information may be based upon typical data for a facility of the proposed type and design.

(2) A description of cooling systems, including approximate drift rate, water flow and water quality (TDS content).

(3) A projection of facility-related emissions from the stack and combustion system, from cooling towers and from associated fuel and other material handling, delivery and storage systems to the extent that the applicable new source review rule requires attributing these sources to the proposed project. The emissions discussion should include a discussion of the basis of the estimate, such as test results, manufacturers' estimates, extrapolations and all assumptions made.

(4) A list of all applicable air quality rules, regulations, standards and laws.

(5) A statement, including the reasons therefore, of what the applicant considers best available control technology as defined in the applicable district's new source review rule.

(6) Existing baseline air quality data for all regulated pollutants affected by the proposed facility including concentrations of pollutants, an extrapolation of that data to the proposed site, and a comparison of the extrapolated data with all applicable ambient air quality

standards. This discussion should include a description of the source of the data, the method used to derive the data and the basis for any extrapolations made to the proposed site.

(7) Existing meteorological data including wind speed and direction, ambient temperature, relative humidity, stability and mixing height, and existing upper air data; and a discussion of the extent to which the data are typical conditions at the proposed site. This description should include a discussion of the source of the data and the method used to derive the data.

(8) A worst case air quality analysis for each proposed site and related facility to determine whether the plant may cause or contribute to a violation of each applicable ambient air quality standard. Such analysis shall include a description of the methodology employed and the basis for the conclusions reached, and shall consider topography, meteorology and contributions from other sources in the area.

(9) A discussion of the emission offset strategy or any other method of complying with the applicable new source review rule. The emission offset strategy shall be designed to show whether there are sufficient offsets available (contracts are not required). Offset categories (e.g. dry cleaners, degreasers) and an inventory of potential reductions may be used unless most of the potential offsets come from a very small number of sources. In the latter case, the offset sources should be more specifically identified. Potential offsets may be aggregated by geographic location as appropriate under the applicable rule. The offset discussion should also include a brief description of the emissions controls to be used for each offset category and should account for applicable rules requiring emission reductions. In the event there is no emissions inventory available from the ARB or from the applicable local district, the applicant may propose an alternative method for complying with this requirement.

(10) Based upon worst case data for analysis for short-term averaging times and typical data for analysis for annual averaging times, discussion of whether the proposed facility will be within PSD Class I or Class II increments.

(m) The notice shall designate an individual or individuals authorized to receive pleadings, briefs, comments, and other documents for the applicant.

(n) The notice may contain any other pertinent information that the applicant desires to submit.

Note: Authority cited: Sections 25213 and 25502, Public Resources Code. Reference: Sections 21080.5, 25309, 25502, 25504, 25511, 25514, and 25541.5, Public Resources Code.

## **Appendix B**

### **Information Requirements for an Application**

#### **(a) Executive Summary**

##### **(1) Project Overview**

(A) A general description of the proposed site and related facilities, including the location of the site or transmission routes, the type, size and capacity of the generating or transmission facilities, fuel characteristics, fuel supply routes and facilities, water supply routes and facilities, pollution control systems, and other general characteristics.

(B) Identification of the location of the proposed site and related facilities by section, township, range, county, and assessor's parcel numbers.

(C) A description of and maps depicting the region, the vicinity, and the site and its immediate surroundings.

(D) A full-page color photographic reproduction depicting the visual appearance of the site prior to construction, and a full-page color simulation or artist's rendering of the site and all project components at the site, after construction.

(E) In an appendix to the application, a list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of the proposed transmission line and other linear facilities, and within 1000 feet of the proposed powerplant and related facilities.

(2) Project Schedule: Proposed dates of initiation and completion of construction, initial start-up, and full-scale operation of the proposed facilities.

##### **(3) Project Ownership**

(A) A list of all owners and operators of the site(s), the power plant facilities, and, if applicable, the thermal host, the geothermal leasehold, the geothermal resource conveyance lines, and the geothermal re-injection system, and a description of their legal interest in these facilities.

(B) A list of all owners and operators of the proposed electric transmission facilities.

(C) A description of the legal relationship between the applicant and each of the persons or entities specified in subsections (a)(3)(A) and (B).

#### **(b) Project Description**

(1) In a section entitled, "Generation Facility Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (1" = 2000'), (or appropriate map scale agreed to by staff) along with an identification of the dedicated leaseholds by section, township, range, county, and county assessor's parcel number, showing the proposed final locations and layout of the power plant and all related facilities;

(B) Scale plan and elevation drawings depicting the relative size and location of the power plant and all related facilities to establish the accuracy of the photo simulations required in Sections (a)(1)(D) and (g)(6)(F);

(C) A detailed description of the design, construction, and operation of the facilities, specifically including the power generation, cooling, water supply and treatment, waste handling and control, pollution control, fuel handling, and safety, emergency and auxiliary systems, and fuel types and fuel use scenarios; and

(D) A description of how the site and related facilities were selected and the consideration given to engineering constraints, site geology, environmental impacts, water, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant.

(2) In a section entitled, "Transmission Lines Description, Design, and Operation" provide the following information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) of each proposed transmission line route, showing the settled areas, parks, recreational areas, scenic areas, and existing transmission lines within one mile of the proposed route(s);

(B) A full-page color photographic reproduction depicting a representative above ground section of the transmission line route prior to construction and a full-page color photographic simulation of that section of the transmission line route after construction;

(C) A detailed description of the design, construction, and operation of any electric transmission facilities, such as power lines, substations, switchyards, or other transmission equipment, which will be constructed or modified to transmit electrical power from the proposed power plant to the load centers to be served by the facility. Such description shall include the width of rights-of-way and the physical and electrical characteristics of electrical transmission facilities such as towers, conductors, and insulators.

(D) A description of how the route and additional transmission facilities were selected, and the consideration given to engineering constraints, environmental impacts, resource conveyance constraints, and electric transmission constraints; and

(E) A completed System Impact Study or signed System Impact Study Agreement with the California Independent System Operator and proof of payment. When not connecting to the California Independent System Operator controlled grid, provide the executed System Impact Study agreement and proof of payment to the interconnecting utility.

If the interconnection and operation of the proposed project will likely impact a transmission system that is not controlled by the interconnecting utility (or California Independent System Operator), provide evidence of a System Impact Study or agreement and proof of payment (when applicable) with/to the impacted transmission owner or provide evidence that there are no system impacts requiring mitigation.

(3) Applications for geothermal facilities shall contain the following additional information:

(A) Maps at a scale of 1:24,000 (or appropriate map scale agreed to by staff) showing the location of the geothermal leaseholds, along with a description by section, township, range, county, and assessor's parcel numbers of the leaseholds;

(B) Full-page color photographic reproductions of the geothermal leaseholds;

(C) A description of the process by which the geothermal leasehold was selected and the consideration given to engineering constraints, site geology, environmental impacts, water, steam, waste and fuel constraints, electric transmission constraints, and any other factors considered by the applicant. Include references to any environmental documents which address steam field development;

(D) A detailed description of the type, quality, and characteristics of the geothermal resource, including pressure and temperature flow rates, constituents and concentrations of non-condensable gases, and constituent concentrations of dissolved solids, and descriptions and concentrations of any substances potentially harmful to public health and safety or to the environment;

(E) Proposed locations of production and re-injection wells for the project. Include the applicant's assessment of geothermal resource adequacy, including the production history of those wells within the leaseholds dedicate to the project, including pressure decline curves as available; and

(F) A discussion of the potential impacts on the temperature, mineral content, and rate of flow of thermal springs affected by the project.

**(c) Reserved**

**(d) Information for Projects Which Completed the NOI Process**

(1) A copy of any study or analysis required by the terms of the Commission's Final Decision on the NOI, and a brief summary of the results of the study or analysis.

(2) Updates of any significant information which has changed since the Commission's Final Decision on the NOI.

**(e) Facility Closure**

(1) A discussion of how facility closure will be accomplished in the event of premature or unexpected cessation of operations.

**(f) Alternatives**

(1) A discussion of the range of reasonable alternatives to the project, or to the location of the project, including the no project alternative, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and an evaluation of the comparative merits of the alternatives. In accordance with Public Resources Code section 25540.6(b), a discussion of the applicant's site selection criteria, any alternative sites considered for the project, and the reasons why the applicant chose the proposed site.

(2) An evaluation of the comparative engineering, economic, and environmental merits of the alternatives discussed in subsection (f)(1).

**(g) Environmental Information**

(1) General Information: For each technical area listed below, provide a discussion of the existing site conditions, the expected direct, indirect, and cumulative impacts due to the construction, operation, and maintenance of the project, the measures proposed to mitigate adverse environmental impacts of the project, the effectiveness of the proposed measures, and any monitoring plans proposed to verify the effectiveness of the mitigation. Additional requirements specific to each technical area are listed below.

**(2) Cultural Resources**

(A) A summary of the ethnology, prehistory, and history of the region with emphasis on the area within no more than a 5-mile radius of the project location.

(B) The results of a literature search to identify cultural resources within an area not less than a 1-mile radius around the project site and not less than one-quarter (0.25) mile on each side of the linear facilities. Identify any cultural resources listed pursuant to ordinance by a city or county, or recognized by any local historical or archaeological society or museum. Literature searches to identify the above cultural resources must be completed by, or under the direction of, individuals who meet the Secretary of the Interior's Professional Standards for the technical area addressed.

Copies of California Department of Parks and Recreation (DPR) 523 forms (Title 14 CCR §4853) shall be provided for all cultural resources (ethnographic, architectural, historical, and archaeological) identified in the literature search as being 45 years or older or of exceptional importance as defined in the National Register Bulletin Guidelines, (36CFR60.4(g)). A copy of the USGS 7.5' quadrangle map of the literature search area delineating the areas of all past surveys and noting the California Historical Resources Information System (CHRIS) identifying number shall be provided. Copies also shall be provided of all technical reports whose survey coverage is wholly or partly within .25 mile of the area surveyed for the project under Section (g)(2)(C), or which report on any archaeological excavations or architectural surveys within the literature search area.

(C) The results of new surveys or surveys less than 5 years old shall be provided if survey records of the area potentially affected by the project are more than five (5) years old. Surveys to identify new cultural resources must be completed by (or under the direction of) individuals who meet the Secretary of the Interior's Professional Standards for the technical area addressed.

New pedestrian archaeological surveys shall be conducted inclusive of the project site and project linear facility routes, extending to no less than 200' around the project site, substations and staging areas, and to no less than 50' to either side of the right-of-way of project linear facility routes. New historic architecture field surveys in rural areas shall be conducted inclusive of the project site and the project linear facility routes, extending no less than .5 mile out from the proposed plant site and from the routes of all above-ground linear facilities. New historic architecture field surveys in urban and suburban areas shall be conducted inclusive of the project site, extending no less than one parcel's distance from all proposed plant site boundaries. New historic architecture field reconnaissance ("windshield

survey”) in urban and suburban areas shall be conducted along the routes of all linear facilities to identify, inventory, and characterize structures and districts that appear to be older than 45 years or that are exceptionally significant, whatever their age.

A technical report of the results of the new surveys, conforming to the Archaeological Resource Management Report format (CA Office of Historic Preservation Feb 1990), which is incorporated by reference in its entirety, shall be separately provided and submitted (under confidential cover if archaeological site locations are included). Information included in the technical report shall also be provided in the Application for Certification, except that confidential information (archaeological sites or areas of religious significance) shall be submitted under a request for confidentiality pursuant to Title 20, California Code of Regulations, § 2501 et seq. At a minimum, the technical report shall include the following:

(i) The summary from Appendix B (g)(2)(A) and the literature search results from Appendix B (g)(2)(B).

(ii) The survey procedures and methodology used to identify cultural resources and a discussion of the cultural resources identified by the survey.

(iii) Copies of all new and updated DPR 523(A) forms. If a cultural resource may be impacted by the project, also include the appropriate DPR 523 detail form for each such resource.

(iv) A map at a scale of 1:24,000 U.S. Geological Survey quadrangle depicting the locations of all previously known and newly identified cultural resources compiled through the research required by Appendix B (g)(2)(B) and Appendix B (g)(2)(C) (ii).

(v) The names and qualifications of the cultural resources specialists who contributed to and were responsible for literature searches, surveys, and preparation of the technical report.

(D) Provide a copy of your request to the Native American Heritage Commission (NAHC) for information on Native American sacred sites and lists of Native Americans interested in the project vicinity, and copies of any correspondence received from the NAHC. Notify the Native Americans on the NAHC list about the project, including a project description and map. Provide a copy of all correspondence sent to Native American individuals and groups listed by the NAHC and copies of all responses. Provide a written summary of any oral responses.

(E) Include in the discussion of proposed mitigation measures required by subdivision (g)(1):

(i) A discussion of measures proposed to mitigate project impacts to known cultural resources;

(ii) A set of contingency measures proposed to mitigate potential impacts to previously unknown cultural resources and any unanticipated impacts to known cultural resources;

(iii) Educational programs to enhance employee awareness during construction and operation to protect cultural resources.



### (3) Land Use

(A) A discussion of existing land uses and current zoning at the site, land uses and land use patterns within one mile of the proposed site and within one-quarter mile of any project-related linear facilities. Include:

(i) An identification of residential, commercial, industrial, recreational, scenic, agricultural, natural resource protection, natural resource extraction, educational, religious, cultural, and historic areas, and any other area of unique land uses;

(ii) A discussion of any recent or proposed zone changes and/or general plan amendments; noticed by an elected or appointed board, commission, or similar entity at the state or local level.

(iii) Identification of all discretionary reviews by public agencies initiated or completed within 18 months prior to filing the application for those changes or developments identified in subsection (g)(3)(A)(ii); and

(iv) Legible maps of the areas identified in subsection (g)(3)(A) potentially affected by the project, on which existing land uses, jurisdictional boundaries, general plan designations, specific plan designations, and zoning have been clearly delineated.

(B) A discussion of the compatibility of the proposed project with present and expected land uses, and conformity with any long-range land use plans adopted by any federal, state, regional, or local planning agencies. The discussion shall identify the need, if any, for land use decisions by another public agency or as part of the commission's decision that would be necessary to make the project conform to adopted federal, state, regional, or local coastal plans, land use plans, or zoning ordinances. Examples of land use decisions include: general plan amendments, zoning changes, lot line adjustments, parcel mergers, subdivision maps, Agricultural Land Conservation Act contracts cancellation, and Airport Land Use Plan consistency determinations.

(C) A discussion of the legal status of the parcel(s) on which the project is proposed. If the proposed site consists of more than one legal parcel, describe the method and timetable for merging or otherwise combining those parcels so that the proposed project, excluding linears and temporary laydown or staging area, will be located on a single legal parcel. The merger need not occur prior to a decision on the Application but must be completed prior to the start of construction.

(D) A map at a scale of 1:24,000 and written description of agricultural land uses found within all areas affected by the proposed project. The description shall include:

(i) Crop types, irrigation systems, and any special cultivation practices; and

(ii) Whether farmland affected by the project is prime, of statewide importance, or unique as defined by the California Department of Conservation.

(iii) Direct, indirect, and cumulative effects on agricultural land uses. If the proposed site or related facilities are subject to an Agricultural Land Conservation contract, provide a written copy and a discussion of the status of the expiration or canceling of such contract.

#### (4) Noise

(A) A land use map which identifies residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment within the area impacted by the proposed project. The area potentially impacted by the proposed project is that area where, during either construction or operation, there is a potential increase of 5 dB(A) or more, over existing background levels.

(B) A description of the ambient noise levels at those sites identified under subsection (g)(4)(A) which the applicant believes provide a representative characterization of the ambient noise levels in the project vicinity, and a discussion of the general atmospheric conditions, including temperature, humidity, and the presence of wind and rain at the time of the measurements. The existing noise levels shall be determined by taking noise measurements for a minimum of 25 consecutive hours at a minimum of one site. Other sites may be monitored for a lesser duration at the applicant's discretion, preferably during the same 25-hour period. The results of the noise level measurements shall be reported as hourly averages in Leq (equivalent sound or noise level), Ldn (day-night sound or noise level) or CNEL (Community Noise Equivalent Level) in units of dB(A). The L10, L50, and L90 values (noise levels exceeded 10 percent, 50 percent, and 90 percent of the time, respectively) shall also be reported in units of dB(A).

(C) A description of the major noise sources of the project, including the range of noise levels and the tonal and frequency characteristics of the noise emitted.

(D) An estimate of the project noise levels, during both construction and operation, at residences, hospitals, libraries, schools, places of worship, or other facilities where quiet is an important attribute of the environment, within the area impacted by the proposed project.

(E) An estimate of the project noise levels within the project site boundary during both construction and operation and the impact to the workers at the site due to the estimated noise levels.

(F) The audible noise from existing switchyards and overhead transmission lines that would be affected by the project, and estimates of the future audible noise levels that would result from existing and proposed switchyards and transmission lines. Noise levels shall be calculated at the property boundary for switchyards and at the edge of the rights-of-way for transmission lines.

#### (5) Traffic and Transportation

(A) A regional transportation setting, on topographic maps (scale of 1:250,000), identifying the project location and major transportation facilities. Include a reference to the transportation element of any applicable local or regional plan.

(B) If the proposed project including any linear facility is to be located within 20,000 feet of an airport runway that is at least 3,200 feet in actual length, or 5,000 feet of a heliport (or planned or proposed airport runway or an airport runway under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration), discuss the project's compliance with the applicable sections of the current Federal Aviation Regulation Part 77 – Objects Affecting Navigable Airspace, specifically any potential to obstruct or impede air navigation generated by the project at operation; such as, a thermal plume, a visible water

vapor plume, glare, electrical interference, or surface structure height. The discussion should include a map at a scale of 1:24,000 that displays the airport or airstrip runway configuration, the proposed power plant site and related facilities.

(C) An identification, on topographic maps at a scale of 1:24,000, and a description of existing and planned roads, rail lines (including light rail), bike trails, airports, bus routes serving the project vicinity, pipelines, and canals in the project area affected by or serving the proposed facility. For each road identified, include the following information, where applicable:

- (i) Road classification and design capacity;
- (ii) Current daily average and peak traffic counts;
- (iii) Current and projected levels of service before project development, during construction, and during project operation;
- (iv) Weight and load limitations;
- (v) Estimated percentage of current traffic flows for passenger vehicles and trucks; and
- (vi) An identification of any road features affecting public safety.

(D) An assessment of the construction and operation impacts of the proposed project on the transportation facilities identified in subsection (g)(5)(C). Also include anticipated project-specific traffic, estimated changes to daily average and peak traffic counts, levels of service, and traffic/truck mix, and the impact of construction of any facilities identified in subsection (g)(5)(C).

(E) A discussion of project-related hazardous materials to be transported to or from the project during construction and operation of the project, including the types, estimated quantities, estimated number of trips, anticipated routes, means of transportation, and any transportation hazards associated with such transport.

#### (6) Visual Resources

(A) Descriptions of the existing visual setting of the vicinity of the proposed project site and the proposed routes for any project-related linear facilities. Include:

(i) Topographic maps at a scale of 1:24,000 that depict directions from which the project would be seen, the view areas most sensitive to the potential visual impacts of the project, and the locations where photographs were taken for (g)(6)(C); and

(ii) Description of the existing visual properties of the topography, vegetation, and any modifications to the landscape as a result of human activities, including existing water vapor plumes, above-ground electrical transmission lines, and nighttime lighting levels in the project viewshed.

(B) An assessment of the visual quality of those areas that would be affected by the proposed project. For projects proposed to be located within the coastal zone, the assessment should also describe how the proposed project would be sited to protect views to and along the

ocean and scenic coastal areas, would minimize the alteration of natural land forms, would be visually compatible with the character of surrounding areas.

(C) In consultation with Energy Commission staff identify; i) any designated scenic roadways or scenic corridors and any visually sensitive areas that would be affected by the proposed project, including recreational and residential areas; and ii) the locations of the key observation points to represent the most critical viewing locations from which to conduct detailed analyses of the visual impacts of the proposed project. Indicate the approximate number of people using each of these sensitive areas and the estimated number of residences with views of the project. Also identify any major public roadways and trails of local importance that would be visually impacted by the project and indicate the types of travelers (e.g., local residents, recreationists, workers, commuters, etc.) and the approximate number of vehicles, bicyclists, and/or hikers per day.

(D) A table providing the dimensions (height, length, and width, or diameter) and, proposed color(s), materials, finishes, patterns, and other proposed design characteristics of each major component visible from off the project site, including any project-related electrical transmission line and/or offsite aboveground pipelines and metering stations.

(E) Provide the cooling tower and heat recovery steam generator (HRSG) exhaust design parameters that affect visible plume formation. For the cooling tower, data shall include heat rejection rate, exhaust temperature, exhaust mass flow rate, liquid to gas mass flow ratio, and, if the tower is plume-abated, moisture content (percent by weight) or plume-abated fogging curve(s). The parameters shall account for a range of ambient conditions (temperature and relative humidity) and proposed operating scenarios, such as duct firing and shutting down individual cells. For the heat recovery steam generator exhausts, data shall include moisture content (percent by weight), exhaust mass flow rate, and exhaust temperature. The parameters must correspond to full-load operating conditions at specified ambient conditions, and shall account for proposed operating scenarios, such as power augmentation (i.e., evaporative coolers, inlet foggers, or steam injection) and duct firing, or proposed HRSG visible plume abatement, such as the use of an economizer bypass. For simple-cycle projects, provide analogous data for the exhaust stack(s).

(F) Provide: i) full-page color photographic reproductions of the existing site, and ii) full-page color simulations of the proposed project at life-size scale when the picture is held 10 inches from the viewer's eyes, including any project-related electrical transmission lines, in the existing setting from each key observation point. If any landscaping is proposed to comply with zoning requirements or to mitigate visual impacts, include the landscaping in simulation(s) representing sensitive area views, depicting the landscaping five years after installation; and estimate the expected time until maturity is reached.

(G) An assessment of the visual impacts of the project, including light, glare, and any modeling of visible plumes. Include a description of the method and identify any computer model used to assess the impacts. Provide an estimate of the expected frequency and dimensions (height, length, and width) of the visible cooling tower and/or exhaust stack plumes. Provide the supporting assumptions, meteorological data, operating parameters, and calculations used.

(H) If any landscaping is proposed to reduce the visual impacts of the project, provide a conceptual landscaping plan at a 1:40 scale (1"=40'). Include information on the type of plant

species proposed, their size, quantity, and spacing at planting, expected heights at 5 years and maturity, and expected growth rates.

(7) Socioeconomics

(A) A description of the socioeconomic circumstances of the vicinity and region affected by construction and operation of the project. Include:

(i) The economic characteristics, including the economic base, fiscal resources, and a list of the applicable local agencies with taxing powers and their most recent and projected revenues;

(ii) The social characteristics, including population and demographic and community trends;

(iii) Existing unemployment rates;

(iv) Availability of skilled workers by craft required for construction and operation of the project;

(v) Availability of temporary and permanent housing and current vacancy rate; and

(vi) Capacities, existing and expected use levels, and planned expansion of utilities (gas, water, and waste) and public services, including fire protection, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. For projects outside metropolitan areas with a population of 500,000 or more, information for each school district shall include current enrollment and yearly expected enrollment by grade level groupings, excluding project-related changes for the duration of the project schedule.

(B) A discussion of the socioeconomic impacts caused by the construction and operation of the project (note year of estimate, model, if used, and appropriate sources), including:

(i) An estimate of the number of workers to be employed each month by craft during construction, and for operations, an estimate of the number of permanent operations workers during a year;

(ii) An estimate of the percentage of non-local workers who will relocate to the project area to work on the project;

(iii) An estimate of the potential population increase caused directly and indirectly by the project;

(iv) The potential impact of population increase on housing during the construction and operations phases;

(v) The potential impacts, including additional costs, on utilities (gas, water, and waste) and public services, including fire, law enforcement, emergency response, medical facilities, other assessment districts, and school districts. Include response times to hospitals and for police, and emergency services. For projects outside metropolitan areas with a population of 500,000 or more, information on schools shall include project-related enrollment changes by

grade level groupings and associated facility and staffing impacts by school district during the construction and operating phases;

(vi) An estimate of applicable school impact fees;

(vii) An estimate of the total construction payroll and separate estimates of the total operation payroll for permanent and short-term (contract) operations employees;

(viii) An estimate of the expenditures for locally purchased materials for the construction and operation phases of the project; and

(ix) An estimate of the capital cost (plant and equipment) of the project.

(x) An estimate of sales taxes generated during construction and separately during an operational year of the project.

(xi) An estimate of property taxes generated during an operational year of the project.

(xii) The expected direct, indirect, and induced income and employment effects due to construction, operation, and maintenance of the project.

#### (8) Air Quality

(A) The information necessary for the air pollution control district where the project is located to complete a Determination of Compliance.

(B) The heating value and chemical characteristics of the proposed fuels, the stack height and diameter, the exhaust velocity and temperature, the heat rate and the expected capacity factor of the proposed facility.

(C) A description of the control technologies proposed to limit the emission of criteria pollutants.

(D) A description of the cooling system, the estimated cooling tower drift rate, the rate of water flow through the cooling tower, and the maximum concentrations of total dissolved solids.

(E) The emission rates of criteria pollutants and greenhouse gases (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and SF<sub>6</sub>) from the stack, cooling towers, fuels and materials handling processes, delivery and storage systems, and from all on-site secondary emission sources.

(F)(i) A description of typical operational modes, and start-up and shutdown modes for the proposed project, including the estimated frequency of occurrence and duration of each mode, and estimated emission rate for each criteria pollutant during each mode.

(ii) A description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the commercial operations date, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be used during such tests.

(G) The ambient concentrations of all criteria pollutants for the previous three years as measured at the three Air Resources Board certified monitoring stations located closest to the project site, and an analysis of whether this data is representative of conditions at the project site. The applicant may substitute an explanation as to why information from one, two, or all stations is either not available or unnecessary.

(H) One year of meteorological data collected from either the Federal Aviation Administration Class 1 station nearest to the project or from the project site, or meteorological data approved by the California Air Resources Board or the local air pollution district.

(i) If the data is collected from the project site, the applicant shall demonstrate compliance with the requirements of the U.S. Environmental Protection Agency document entitled "On-Site Meteorological Program Guidance for Regulatory Modeling Applications" (EPA - 450/4-87-013 (August 1995)), which is incorporated by reference in its entirety.

(ii) The data shall include quarterly wind tables and wind roses, ambient temperatures, relative humidity, stability and mixing heights, upper atmospheric air data, and an analysis of whether this data is representative of conditions at the project site.

(I) An evaluation of the project's direct and cumulative air quality impacts, consisting of the following:

(i) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct criteria pollutant impacts of project construction activities on ambient air quality conditions, including fugitive dust (PM 10) emissions from grading, excavation and site disturbance, as well as the combustion emissions [nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), particulate matter less than 10 microns in diameter (PM 10) and particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>)] from construction-related equipment;

(ii) A screening level air quality modeling analysis, or a more detailed modeling analysis if so desired by the applicant, of the direct criteria pollutant (NO<sub>x</sub>, SO<sub>2</sub>, CO, PM<sub>10</sub> and PM<sub>2.5</sub>) impacts on ambient air quality conditions of the project during typical (normal) operation, and during shutdown and startup modes of operation. Identify and include in the modeling of each operating mode the estimated maximum emissions rates and the assumed meteorological conditions; and

(iii) A protocol for a cumulative air quality modeling impacts analysis of the project's typical operating mode in combination with other stationary emissions sources within a six mile radius which have received construction permits but are not yet operational, or are in the permitting process. The cumulative inert pollutant impact analysis should assess whether estimated emissions concentrations will cause or contribute to a violation of any ambient air quality standard.

(iv) an air dispersion modeling analyses of the impacts of the initial commissioning phase emissions on state and federal ambient air quality standards for NO<sub>x</sub>, SO<sub>2</sub>, CO, PM<sub>10</sub> and PM<sub>2.5</sub>.

(J) If an emission offset strategy is proposed to mitigate the project's impacts under subsection (g)(1), provide the following information:

(i) The quantity of offsets or emission reductions that are needed to satisfy air permitting requirements of local permitting agencies (such as the air district), state and federal oversight air agencies, and the California Energy Commission. Identify by criteria air pollutant, and if appropriate, greenhouse gas; and

(ii) Potential offset sources including location, and quantity of emission reductions.

(K) a detailed description of the mitigation, if any, which an applicant may propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule.

(9) Public Health

(A) An assessment of the potential risk to human health from the project's hazardous air emissions using the Air Resources Board Hotspots Analysis and Reporting Program (HARP) (Health and Safety Code §§ 44360-44366) or its successor and Approved Risk Assessment Health Values. These values shall include the cancer potency values and noncancer reference exposure levels approved by the Office of Environmental Health Hazard Assessment (OEHHA Guidelines, Cal-EPA 2005).

(B) A listing of the input data and output results, in both electronic and print formats, used to prepare the HARP health risk assessment.

(C) Identification of available health studies through the local public health department concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site related to respiratory illnesses, cancers or related diseases.

(D) A map showing sensitive receptors within the area exposed to the substances identified in subsection (g)(9)(A).

(E) For purposes of this section, the following definitions apply:

(i) A sensitive receptor refers to infants and children, the elderly, and the chronically ill, and any other member of the general population who is more susceptible to the effects of the exposure than the population at large.

(ii) An acute exposure is one which occurs over a time period of less than or equal to one (1) hour.

(iii) A chronic exposure is one which is greater than twelve (12) percent of a lifetime of seventy (70) years.

(10) Hazardous Materials Handling

(A) A list of all materials used or stored on-site which are hazardous or acutely hazardous, as defined in Title 22, California Code of Regulations, s 66261.20 et seq., and a discussion of the toxicity of each material.



(B) A map at a scale of 1:24,000 depicting the location of schools, hospitals, day-care facilities, emergency response facilities, and long-term health care facilities, within the area potentially affected by any release of hazardous materials.

(C) A discussion of the storage and handling system for each hazardous material used or stored at the site.

(D) The protocol that will be used in modeling potential consequences of accidental releases that could result in off site impacts. Identify the model(s) to be used, a description of all input assumptions, including meteorological conditions. The results of the modeling analysis can be substituted after the AFC is complete.

(E) A discussion of whether a Risk Management Prevention Plan (Health and Safety Code § 25531 et seq.) will be required, and if so, the requirements that will likely be incorporated into the plan.

(F) A discussion of measures proposed to reduce the risk of any release of hazardous materials.

(G) A discussion of the fire and explosion risks associated with the project.

(11) Worker Safety

(A) A description of the safety training programs which will be required for construction and operation personnel.

(B) A complete description of the fuel handling system and the fire suppression system.

(C) Provide draft outlines of the Construction Health and Safety Program and the Operation Health and Safety Program, as follows:

**Construction Health and Safety Program:**

- \* Injury and Illness Prevention Plan (8 Cal. Code Regs., § 1509);
- \* Fire Protection and Prevention Plan (8 Cal. Code Regs., § 1920);
- \* Personal Protective Equipment Program (8 Cal. Code Regs., §§ 1514-1522).

**Operation Health and Safety Program:**

- \* Injury and Illness Prevention Program (8 Cal. Code Regs., § 3203);
- \* Fire Prevention Plan (8 Cal. Code Regs., § 3221);
- \* Emergency Action Plan (8 Cal. Code Regs., § 3220);
- \* Personal Protective Equipment Program (8 Cal. Code Regs., §§ 3401-3411).

## (12) Waste Management

(A) A Phase I Environmental Site Assessment (ESA) for the proposed power plant site using methods prescribed by the American Society for Testing and Materials (ASTM) document entitled "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process" (Designation: E 1527-93, May 1993), which is incorporated by reference in its entirety; or an equivalent method agreed upon by the applicant and the CEC Staff that provides similar documentation of the potential level and extent of site contamination. The Phase I ESA shall have been completed no earlier than one year prior to the filing of the AFC.

(B) A description of each waste stream estimated to be generated during project construction and operation, including origin, hazardous or nonhazardous classification pursuant to Title 22, California Code of Regulations, Sections 66261.20 et seq., chemical composition, estimated annual weight or volume generated, and estimated frequency of generation.

(C) A description of all waste disposal sites which may feasibly be used for disposal of project wastes. For each site, include the name, location, classification under Title 23, California Code of Regulations, Sections 2530 et seq., the daily or annual permitted capacity, daily or annual amounts of waste currently being accepted, the estimated closure date and remaining capacity, and a description of any enforcement action taken by local or state agencies due to waste disposal activities at the site.

(D) A description of management methods for each waste stream, including methods used to minimize waste generation, length of on- and off-site waste storage, re-use and recycling opportunities, waste treatment methods used, and use of contractors for treatment.

## (13) Biological Resources

(A) A regional overview and discussion of terrestrial and aquatic biological resources, with particular attention to sensitive biological resources within ten (10) miles of the project. Include a map at a scale of 1:100,000 (or other suitable scale) showing sensitive biological resource location(s) in relation to the project site and related facilities and any boundaries of a local Habitat Conservation Plan or similar open space land use plan or designation. Sensitive biological resources include the following:

- (i) species listed under state or federal Endangered Species Acts;
- (ii) resources defined in sections 1702(q) and (v) of Title 20 of the California Code of Regulations;
- (iii) species identified as state Fully Protected;
- (iv) species covered by Migratory Bird Treaty Act;
- (v) species and habitats identified by local, state, and federal agencies as needing protection, including but not limited to those identified by the California Natural Diversity Database, or where applicable, in Local Coastal Programs or in relevant decisions of the California Coastal Commission; and
- (vi) fish and wildlife species that have commercial and/or recreational value.

(B) Include a list of the species actually observed and those with a potential to occur within 1 mile of the project site and 1,000 feet from the outer edge of linear facility corridors.

Maps or aerial photographs shall include the following:

(i) Detailed maps at a scale of 1:6,000 or color aerial photographs taken at a recommended scale of 1 inch equals 500 feet (1:6,000) with a 30 percent overlap that show the proposed project site and related facilities, biological resources including, but not limited to, those found during project-related field surveys and in records from the California Natural Diversity Database, and the associated areas where biological surveys were conducted. Label the biological resources and survey areas as well as the project facilities.

(ii) A depiction of the extent of the thermal plume at the surface of the water if cooling water is proposed to be discharged to a water source. Provide the location for the intake and discharge structures on an aerial photograph(s) or detailed maps. Water sources include, but are not limited to, waterways, lakes, impoundments, oceans, bays, rivers, and estuaries.

(iii) An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application. For projects proposed to be located within the coastal zone, also provide aerial photographs or maps as described above that identify wetlands as defined by the Coastal Act.

(C) A discussion of the biological resources at the proposed project site and related facilities. Related facilities include, but are not limited to, laydown and parking areas, gas and water supply pipelines, transmission lines, and roads. The discussion shall address the distribution of vegetation community types, denning or nesting sites, population concentrations, migration corridors, breeding habitats, and other appropriate biological resources including the following:

(i) A list of all the species actually observed.

(ii) A list of sensitive species and habitats with a potential to occur (as defined in (A) above).

(iii) If cooling water is taken directly from or discharged to a surface water feature source, include a description of the intake structure, screens, water volume, intake velocity hydraulic zone field of influence, and the thermal plume dispersion area as depicted in response to B(ii) above. Describe the thermal plume size and dispersion under high and low tides, and in response to local currents and seasonal changes. Provide a discussion of the aquatic habitats, biological resources, and critical life stages found in these affected waters. For repower projects that anticipate no change in cooling water flow, this information shall be provided in the form of the most recent federal Clean Water Act 316(a) and (b) studies of entrainment and impingement impacts that has been completed within the last five (5) years. For new projects or repower projects proposing to use once-through cooling and anticipating an increase in cooling water flow, provide a complete impingement and entrainment analysis per guidance in (D)(ii), below.

(D) A description and results of all field studies and seasonal surveys used to provide biological baseline information about the project site and associated facilities. Include copies of the California Natural Diversity Database records and field survey forms completed by the

applicant's biologist(s). Identify the date(s) the surveys were completed, methods used to complete the surveys, and the name(s) and qualifications of the biologists conducting the surveys. Include:

(i) Current biological resources surveys conducted using appropriate field survey protocols during the appropriate season(s). State and federal agencies with jurisdiction shall be consulted for field survey protocol guidance prior to surveys if a protocol exists.

(ii) If cooling water is proposed to be taken directly from or discharged to a surface water feature source, seasonal aquatic resource studies and surveys shall be conducted. Aquatic resource survey data shall include, but is not limited to, fish trawls, ichthyoplankton, and benthic sampling, and related temperature and water quality samples. For new projects or repower projects anticipating a change in cooling water flows, sampling protocols shall be provided to the Energy Commission staff for review and concurrence prior to the start of sampling. For repower projects not anticipating a change in cooling water flows, this information shall be provided in the form of the most recent federal Clean Water Act 316(b) impingement and entrainment impact study completed within five (5) years of the AFC filing date.

(iii) If the project or any related facilities could impact a jurisdictional or non-jurisdictional wetland, provide completed Army Corps of Engineers wetland delineation forms and/or determination of wetland status pursuant to Coastal Act requirements, name(s) and qualifications of biologist(s) completing the delineation, the results of the delineation and a table showing wetland acreage amounts to be impacted.

(E) Impacts discussion of the following:

(i) all impacts (direct, indirect, and cumulative) to biological resources from project site preparation, construction activities, plant operation, maintenance, and closure. Discussion shall also address sensitive species habitat impacts from cooling tower drift and air emissions.

(ii) facilities that propose to take water directly from, and/or discharge water to surface water features, daytime and nighttime impacts from the intake and discharge of water during operation, water velocity at the intake screen, the intake field of influence, impingement, entrainment, and thermal discharge. Provide a discussion of the extent of the thermal plume, effluent chemicals, oxygen saturation, intake pump operations, and the volume and rate of cooling water flow at the intake and discharge location.

(iii) Methods to control biofouling and chemical concentrations, and temperatures that are currently being discharged or will be discharged to receiving waters.

(F) A discussion of all feasible mitigation measures including, but not limited to the following:

(i) All measures proposed to avoid and/or reduce adverse impacts to biological resources.

(ii) All off-site habitat mitigation and habitat improvement or compensation, and an identification of contacts for compensation habitat and management.

(iii) Design features to better disperse or eliminate a thermal discharge.

(iv) All measures proposed to avoid or minimize adverse impacts of cooling water intake. This shall include a Best Technology Available (BTA) discussion. If BTA is not being proposed, the rationale for not selecting BTA must be provided.

(v) Educational programs to enhance employee awareness during construction and operation to protect biological resources.

(G) A discussion of compliance and monitoring programs to ensure the effectiveness of impact avoidance and mitigation measures incorporated into the project.

(H) Submit copies of any preliminary correspondence between the project applicant and state and federal resource agencies regarding whether federal or state permits from other agencies such as the U. S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Army Corps of Engineers, the California Department of Fish and Game, and the Regional Water Quality Control Board will be required for the proposed project.

#### (14) Water Resources

(A) All the information required to apply for the following permits, if applicable, including:

(i) Waste Discharge Requirements; National Pollutant Discharge Elimination System Permit; and/or a Section 401 Certification or Waiver from the appropriate Regional Water Quality Control Board (RWQCB);

(ii) Construction and Industrial Waste Discharge and/or Industrial Pretreatment permits from wastewater treatment agencies;

(iii) Nationwide Permits and/or Section 404 Permits from the U.S. Army Corps of Engineers; and

(iv) Underground Injection Control Permit(s) from the U.S. Environmental Protection Agency, California Division of Oil and Gas, and RWQCB.

(B) A detailed description of the hydrologic setting of the project. The information shall include a narrative discussion and on maps at a scale of 1:24,000 (or appropriate scale approved by staff), describing the chemical and physical characteristics of the following nearby water bodies that may be affected by the proposed project:

(i) Ground water bodies and related geologic structures;

(ii) Surface water bodies;

(iii) Water inundation zones, such as the 100-year flood plain and tsunami run-up zones;

(iv) Flood control facilities (existing and proposed); and

(v) Groundwater wells within ½ mile if the project will include pumping.

(C) A description of the water to be used and discharged by the project. This information shall include:

(i) Source(s) of the primary and back-up water supplies and the rationale for their selection;

(ii) The expected physical and chemical characteristics of the source and discharge water(s) including identification of both organic and inorganic constituents before and after any project-related treatment. For source waters with seasonal variation, provide seasonal ranges of the expected physical and chemical characteristics. Provide copies of background material used to create this description (e.g., laboratory analysis);

(iii) Average and maximum daily and annual water demand and waste water discharge for both the construction and operation phases of the project;

(iv) A detailed description of all facilities to be used in water conveyance (from primary source to the power plant site), water treatment, and wastewater discharge. Include a water mass balance diagram;

(v) For all water supplies intended for industrial uses to be provided from public or private water purveyors, a letter of intent or will-serve letter indicating that the purveyor is willing to serve the project, has adequate supplies available for the life of the project, and any conditions or restrictions under which water will be provided. In the event that a will-serve letter or letter of intent can not be provided, identify the most likely water purveyor and discuss the necessary assurances from the water purveyor to serve the project.

(vi) For all water supplied which necessitates transfers and/or exchanges at any point, identify all parties and contracts/agreements involved, the primary source for the transfer and/or exchange water (e.g., surface water, groundwater), and provide the status of all appropriate agencies' approvals for the proposed use, environmental impact analysis on the specific transfers and/or exchanges required to obtain the proposed supplies, a copy of any agency regulations that govern the use of the water, and an explanation of how the project complies with the agency regulation(s);

(vii) Provide water mass balance and heat balance diagrams for both average and maximum flows that include all process and/or ancillary water supplies and wastewater streams. Highlight any water conservation measures on the diagram and the amount that they reduce water demand.

(viii) For all projects which have a discharge, provide a copy of the will-serve letter, permit or contract with the public or private entity that will be accepting the wastewater and contact storm water from the project. The letter, permit or contract, if possible, shall identify the discharge volumes and the chemical or physical characteristics under which the wastewater and contact storm water will be accepted.

In the event that a will-serve letter, permit, or contract cannot be provided, identify the most likely wastewater/storm water entity and discuss why the applicant was unable to secure the necessary assurances to serve the project's wastewater/storm water needs. Also, discuss the term of the wastewater service to the project, whether the wastewater entity has adequate permit capacity for the volume of wastewater from the project and has adequate permit levels for the chemical/physical characteristics of the project's wastewater and storm water for the life of the project, and any issues or conditions/restrictions the wastewater entity may impose on the project.

(D) Identify all project elements associated with stormwater drainage, including a description of the following:

(i) Monthly and/or seasonal precipitation and stormwater runoff and drainage patterns for the proposed site and surrounding area that may be affected by the project's construction and operation;

(ii) Drainage facilities and the design criteria used for the plant site and ancillary facilities, including but not limited to capacity of designed system, design storm, and estimated runoff;

(iii) All assumptions and calculations used to calculate runoff and to estimate changes in flow rates between pre- and post construction; and

(iv) A copy of applicable regional and local requirements regulating the drainage systems, and a discussion of how the project's drainage design complies with these requirements.

(E) An impacts analysis of the proposed project on water resources and a discussion of conformance with water-related Laws, Ordinances, Regulations, and Standards (LORS) and policy. This discussion shall include:

(i) The effects of project demand on the water supply and other users of this source, including, but not limited to, water availability for other uses during construction or after the power plant begins operation, consistency of the water use with applicable RWQCB basin plans or other applicable resource management plans, and any changes in the physical or chemical conditions of existing water supplies as a result of water use by the power plant;

(ii) If the project will pump groundwater, an estimation of aquifer drawdown based on a computer modeling study shall be conducted by a professional geologist and include the estimated drawdown on neighboring wells within 0.5 mile of the proposed well(s), any effects on the migration of groundwater contaminants, and the likelihood of any changes in existing physical or chemical conditions of groundwater resources shall be provided;

(iii) The effects of construction activities and plant operation on water quality and to what extent these effects could be mitigated by best management practices;

(iv) If not using a zero liquid discharge project design for cooling and process waters, include the effects of the proposed wastewater disposal method on receiving waters, the feasibility of using pre-treatment techniques to reduce impacts, and beneficial uses of the receiving waters. Include an explanation why the zero liquid discharge process is "environmentally undesirable," or "economically unsound."

(v) If using fresh water, include a discussion of the cumulative impacts, alternative water supply sources and alternative cooling technologies considered as part of the project design. Include an explanation of why alternative water supplies and alternative cooling are "environmentally undesirable," or "economically unsound."

(vi) The effects of the project on the 100-year flood plain, flooding potential of adjacent lands or water bodies, or other water inundation zones.

(vii) All assumptions, evidence, references, and calculations used in the analysis to assess these effects.

(15) Soils

(A) A map at a scale of 1:24,000 and written description of soil types and all agricultural land uses that will be affected by the proposed project. The description shall include:

(i) The depth, texture, permeability, drainage, erosion hazard rating, and land capability class of the soil;

(ii) An identification of other physical and chemical characteristics of the soil necessary to allow an evaluation of soil erodibility, permeability, re-vegetation potential, and cycling of pollutants in the soil-vegetation system;

(iii) The location of any proposed fill disposal or fill procurement (borrow) sites; and

(iv) The location of any contaminated soils that could be disturbed by project construction.

(B) An assessment of the effects of the proposed project on soil resources and agricultural land uses. This discussion shall include:

(i) The quantification of accelerated soil loss due to wind and water erosion; and

(ii) The effect of power plant emissions on surrounding soil-vegetation systems.

(16) Paleontologic Resources

(A) Identification of the physiographic province and a brief summary of the geologic setting, formations, and stratigraphy of the project area. The size of the paleontological study area may vary depending on the depositional history of the region.

(B) A discussion of the sensitivity of the project area described in subsection (g)(16)(A) and the presence and significance of any known paleontologic localities or other paleontologic resources within or adjacent to the project. Include a discussion of sensitivity for each geologic unit identified on the most recent geologic map at a scale of 1:24,000. Provide rationale as to why the sensitivity was assigned.

(C) A summary of all local museums, literature searches and field surveys used to provide information about paleontologic resources in the project area described in subsection (g)(16)(A). Identify the dates of the surveys, methods used in completing the surveys, and the names and qualifications of the individuals conducting the surveys.

(D) Information on the specific location of known paleontologic resources, survey reports, locality records, and maps at a scale of 1:24,000, showing occurrences of fossil finds, if known, within a one-mile radius of the project and related facilities shall be included in a separate appendix to the Application and submitted to the Commission under a request for confidentiality, pursuant to Title 20, California Code of Regulations, s 2501 et seq.



(E) A discussion of any educational programs proposed to enhance awareness of potential impacts to paleontological resources by employees, measures proposed for mitigation of impacts to known paleontologic resources, and a set of contingency measures for mitigation of potential impacts to currently unknown paleontologic resources.

(17) Geological Hazards and Resources

(A) A summary of the geology, seismicity, and geologic resources of the project site and related facilities, including linear facilities.

(B) A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, tsunami runup, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities.

(C) A map and description of geologic resources of recreational, commercial, or scientific value which may be affected by the project. Include a discussion of the techniques used to identify and evaluate these resources.

(18) Transmission System Safety and Nuisance

(A) The locations and a description of the existing switchyards and overhead and underground transmission lines that would be affected by the proposed project.

(B) An estimate of the existing electric and magnetic fields from the facilities listed in (A) above and the future electric and magnetic fields that would be created by the proposed project, calculated at the property boundary of the site and at the edge of the rights of way for any transmission line. Also provide an estimate of the radio and television interference that could result from the project.

(C) Specific measures proposed to mitigate identified impacts, including a description of measures proposed to eliminate or reduce radio and television interference, and all measures taken to reduce electric and magnetic field levels.

**(h) Engineering**

(1) Facility Design

(A) A description of the actual site conditions and investigations or studies conducted to determine the site conditions used as the basis for developing design criteria. The descriptions shall include, but not be limited to, seismic and other geologic hazards, adverse conditions that could affect the project's foundation, adverse meteorological and climate conditions, and flooding hazards, if applicable.

(B) A discussion of any measures proposed to improve adverse site conditions.

(C) A description of the proposed foundation types, design criteria (include derivation), analytical techniques, assumptions, loading conditions, and loading combinations to be used in the design of facility structures and major mechanical and electrical equipment.

(D) For each of the following facilities and/or systems, provide a description including drawings, dimensions, surface-area requirements, typical operating data, and performance and design criteria for protection from impacts due to adverse site conditions:

- (i) The power generation system;
- (ii) The heat dissipation system;
- (iii) The cooling water supply system, and, where applicable, pre-plant treatment procedures;
- (iv) The atmospheric emission control system;
- (v) The waste disposal system and on-site disposal sites;
- (vi) The noise emission abatement system;
- (vii) The geothermal resource conveyance and re-injection lines (if applicable);
- (viii) Switchyards/transformer systems; and
- (ix) Other significant facilities, structures, or system components proposed by the applicant.

## (2) Transmission System Design

(A) A discussion of the need for the additional electric transmission lines, substations, or other equipment, the basis for selecting principal points of junction with the existing electric transmission system, and the capability and voltage levels of the proposed lines, along with the basis for selection of the capacity and voltage levels.

(B) A discussion of the extent to which the proposed electric transmission facilities have been designed, planned, and routed to meet the transmission requirements created by additional generating facilities planned by the applicant or any other entity.

## (3) Reliability

(A) A discussion of the sources and availability of the fuel or fuels to be used over the estimated service life of the facilities.

(B) A discussion of the anticipated service life and degree of reliability expected to be achieved by the proposed facilities based on a consideration of:

- (i) Expected overall availability factor, and annual and lifetime capacity factors;
- (ii) The demonstrated or anticipated feasibility of the technologies, systems, components, and measures proposed to be employed in the facilities, including the power generation system, the heat dissipation system, the water supply system, the reinjection system, the atmospheric emission control system, resource conveyance lines, and the waste disposal system;

(iii) Geologic and flood hazards, meteorologic conditions and climatic extremes, and cooling water availability;

(iv) Special design features adopted by the applicant or resource supplier to ensure power plant reliability including equipment redundancy; and

(v) For technologies not previously installed and operated in California, the expected power plant maturation period.

(4) Efficiency

(A) Heat and mass balance diagrams for design conditions for each mode of operation.

(B) Annual fuel consumption in BTUs for each mode of operation, including hot restarts and cold starts.

(C) Annual net electrical energy produced in MWh for each mode of operation, including starts and shutdowns.

(D) Number of hours the plant will be operated in each design condition in each year.

(E) If the project will be a cogeneration facility, calculations showing compliance with applicable efficiency and operating standards.

(F) A discussion of alternative generating technologies available for the project, including the projected efficiency of each, and an explanation why the chosen equipment was selected over these alternatives.

(5) Demonstration, if applicable

(A) Justification for the request for demonstration status, based on the criteria contained in the most recently adopted Electricity Report.

(B) A demonstration plan containing the following elements:

(i) A description of the technology to be demonstrated;

(ii) The objectives of the demonstration;

(iii) The plans for acquiring the data necessary to verify the state demonstration objectives;

(iv) The schedule for implementing the demonstration tasks;

(v) The expected date of commencement of commercial operation of the facility, if applicable, and

(vi) A description of contingent actions to be implemented if individual demonstration tasks are technologically unsuccessful.

## **(i) Compliance with Laws, Ordinances, Regulations and Standards**

(1) Tables which identify:

(A) Laws, regulations, ordinances, standards, adopted local, regional, state, and federal land use plans, leases, and permits applicable to the proposed project, and a discussion of the applicability of, and conformance with each. The table or matrix shall explicitly reference pages in the application wherein conformance, with each law or standard during both construction and operation of the facility is discussed; and

(B) Each agency with jurisdiction to issue applicable permits, leases, and approvals or to enforce identified laws, regulations, standards, and adopted local, regional, state, and federal land use plans, and agencies which would have permit approval or enforcement authority, but for the exclusive authority of the commission to certify sites and related facilities.

(2) The name, title, phone number, address (required), and email address (if known), of an official who was contacted within each agency, and also provide the name of the official who will serve as a contact person for Commission staff.

(3) A schedule indicating when permits outside the authority of the commission will be obtained and the steps the applicant has taken or plans to take to obtain such permits.

Note: Authority cited: Sections 25213, 25216.5(a), 25218(e), Public Resources Code.  
Reference: Sections 21080.5, 25519(a), 25519(c), 25520, 25522(b), 25523(d)(1), 25540.1, 25540.2, 25540.6, Public Resources Code.

## **Appendix C**

### **Information Requirements for a Geothermal Notice of Intent**

(a) In a section entitled "Project Description," the notice shall contain:

(1) A map indicating the location or tentative location of the geothermal leasehold and the location or tentative location of each proposed power plant site and related facility, along with a description by section, township, range, and county of the leasehold.

(2) The location or tentative location of production and reinjection well sites, resource conveyance lines, access roads, and waste disposal sites in relation to each geothermal power plant.

(3) Photographic and/or other suitable graphic representations of the geothermal leasehold and each proposed geothermal power plant, and the visual appearance and general surroundings of such proposed power plant.

(4) A description of the process by which the tentative site was selected within the geothermal leasehold and the consideration given to site geology and ease of engineering, physical environmental impact, socioeconomic impacts, resource conveyance constraints, electric transmission constraints, land use constraints, and any other factors considered by the applicant and not listed herein.

(5) A preliminary description of the type, quality, and characteristics of the geothermal resource encountered or expected, including, to the extent known, pressure and temperature, flow rates, concentrations of non-condensable gases, concentrations of dissolved solids, and descriptions and concentrations of any substances potentially harmful to the environment or to the public health and safety.

(6) Where a notice is filed early in the resource development process, and where the pressure, temperature, flow rate, and constituency and concentration of dissolved solids in the geothermal resources are uncertain, an estimate of the probable range of the various resource parameters based upon nearby development, leasehold exploration if it has occurred, or any other information sources available to the applicant and resource developer. In addition, the basis for such estimations shall be clearly identified.

COMMENT: The 18-month certification process is particularly appropriate for the instances described in this subsection.

(7) The maximum estimated generating capacity of each proposed power plant.

(8) A tentative project schedule including permit approvals from the commission and other agencies from which permits must be issued prior to construction or operation, construction lead times, anticipated date of commercial operation, and anticipated operating plant life.

(9) For each of the following facilities and/or systems a general description, which includes dimensions, surface area requirements, and typical operating data, performance and design criteria for protection from impacts due to geotechnical hazards, flood hazards, and meteorological extremes, performance and design criteria for assurance of public health and safety and protection of the environment.

(A) Power generation system;

(B) Heat dissipation system;

(C) Cooling water supply system;

(D) Reinjection system;

(E) Atmospheric emission control system;

(F) Waste disposal systems and disposal sites;

(G) Geothermal resource conveyance lines;

(H) Pre-plant cooling water treatment systems, where applicable;

(I) Switchyards/transformer systems; and

(J) Other significant facilities, structures or system components proposed by the applicant not listed above.

COMMENT: The term "performance criteria," when used in these regulations, refers to performance goals which the applicant proposes to use in designing the proposed facilities. For example, a component of the seismic performance criteria would be designing a turbine generator so as to allow continued operation of the proposed facility at full load after the occurrence of a design basis earthquake at the site. Performance criteria are an alternate statement of acceptable risk and are usually semi-quantitative in nature.

The term "design criteria" refers to the limiting criteria used for detailed design of a structure or component. The design criteria produce a design which will meet or exceed the desired performance criteria. For example, design criteria include design loads and the methods for determining loads.

(10) A list of all project participants and their legal interests in the power plant facilities, the geothermal leasehold, the geothermal resource conveyance lines, the geothermal reinjection system, and the electric transmission facilities.

(b) In a section entitled "Need for Project," the notice shall contain:

(1) A discussion of the conformity of the proposed facilities with the level of statewide and service area electrical demand adopted by the commission pursuant to Section 25309 of the Public Resources Code. The discussion shall specify the reasons why the applicant has concluded that the facilities should be added to the applicant's electrical system, including a discussion of whether the facilities are being proposed to meet projected capacity or energy deficits, to displace existing units scheduled for retirement, or to meet requirements for additional reserves.

COMMENT: In the discussion of need, the applicant may incorporate by reference any other relevant filings or submittals to the commission and must include a summary of the referenced material and a discussion of the relevance of such filings or submittals.

(2) An energy and capacity balance showing the forecast of electricity demand as adopted pursuant to Section 25309(b) of the Public Resources Code and generating resources expected to be available to the applicant when the proposed plant is scheduled to begin operation.

(3) The anticipated generating capacity of each proposed facility or facilities, and:

(A) The expected annual capacity factor from the date of initial operation through the 12-year forecast period; and

(B) The expected average annual capacity factor over the anticipated operating life of the facility.

(4) The applicant may demonstrate need for a geothermal facility by reference to the most recent Biennial Report, and in making such demonstration the applicant may cite any findings and conclusions resulting from any generic proceedings conducted by the commission.

(c) In a section entitled "Financial Impacts," the notice shall contain:

(1) A discussion of the preliminary financial requirements for constructing and operating the proposed facilities, including a table summarizing capital requirements and operating

expenses, and their principal components. The discussion shall indicate and explain the basis for any assumed escalation rates and costs of capital, fuel, or other principal components. If more than one site is proposed, significant cost differences between alternative sites should be identified.

(2) A preliminary summary of the cost of the installed generating capacity (expressed in \$/kw) and of the cost of energy at the busbar (expressed in H/kwhr). A list of principal cost components, an explanation of the source of derivation of each, and the calculations used to arrive at the summary costs above shall be provided. Any major uncertainties in the cost figures used or assumptions relied upon shall be explicitly identified and their significance shall be discussed.

(3) In situations where electric transmission facilities serve more than one geothermal power plant, the notice shall identify costs associated with such transmission facilities in a manner which recognizes the allocation of such costs over more than one unit.

(4) A general discussion of the estimated impact of the proposed facilities on customer rates during construction and after commencement of operation.

(d) In a section entitled "Applicable Laws, Ordinances, Standards, Permits, and Approvals," the notice shall contain tables which identify:

(1) Laws, regulations, standards, adopted local, regional, state, and federal land use plans, permits, and approvals applicable to the proposed project, and a discussion of the applicability of each.

(2) The agency with jurisdiction to issue applicable permits and approvals or to enforce such identified laws, regulations, standards, and adopted local, regional, state, and federal land use plans, or agencies which would have permit approval or enforcement authority but for the exclusive authority of the commission to certify geothermal sites and related facilities.

(3) The name, title, and address, if known, of an official within each agency who will serve as a contract person for each respective agency.

(4) References to the text of the notice wherein the compatibility of the proposed project with each identified law, regulation, standard, adopted local, regional, state, and federal land use plans, permits and approvals, is discussed.

COMMENT: The information requirements set forth in portion IV of Appendix A applies only to facilities to be constructed by the applicant, and not to the geothermal field. The applicant's discussion in this portion shall give particular consideration to those county hydrologic elements, county solid waste management laws, state water use plans, and water basin plans identified in Appendix A.V.B.

(e) In a section entitled "Environmental Description and Project Effects," the notice shall identify potential physical, biological, social, economic and cultural effects of the proposed project and contain:

(1) With respect to air quality:

(A) Available baseline air quality data including concentrations of pollutants, and a comparison of air quality data with applicable ambient air standards.

(B) Available meteorological data, including wind speed and direction, ambient temperature, relative humidity, stability and mixing height, and available upper air data.

(C) A discussion of the extent to which the data in subsections 1 and 2 above are typical of conditions at the proposed site and the KGRA; also, provide a description of the monitoring program, if any, used to obtain required data, including the location and elevation of monitoring stations, parameters measured, and duration of monitoring.

(D) A worst case air quality impact analysis for each proposed site and related facility and source of air emissions, assuming worst case meteorological conditions and emissions consistent with applicable emission standards, including the cumulative effect of wells and pipelines in normal and shutdown modes of operation, in order to determine the worst case impact on potential sensitive receptors. Such analysis shall include the basis of the worst case and consider topography, meteorology, and contributions from other sources in the KGRA.

(E) A general description of normal and shutdown modes of operation for the proposed facility or facilities that affect the release of pollutant emissions into the atmosphere for existing and proposed sources or groups of sources that would have additive effects, including estimated frequency of occurrence, duration, location, and estimated emission rate for each pollutant of interest.

(F) A general discussion of expected or confirmed chemical constituencies of gaseous and particulate pollutants from the proposed project including wells and resource conveyance lines.

(G) For facilities using an external water supply, an estimate of cooling tower particulate and gaseous emissions associated with each alternative cooling water source considered.

(H) A discussion of applicable rules, including but not limited to standards, new source review, and significant deterioration rules established pursuant to Chapter 1 (commencing with # 39000) of Division 26 of the Health and Safety Code, and the methods proposed to satisfy these rules.

(2) With respect to hydrology, water supply, and water quality:

(A) A description of surface waters which may be a source of cooling water or which may be potentially impacted by the proposed project. Such description shall indicate the proximity of such surface waters to the geothermal field and power plant site, availability of cooling water for the project, competitive uses for the cooling water supply, quality of cooling water supply, and available data on existing quality of surface waters potentially impacted or any programs proposed to identify and monitor water quality.

(B) A description of local and regional groundwater aquifers and related geologic formations, structures, recharge areas, and major groundwater uses.

(C) A description of existing regional and local precipitation and storm runoff data, including maximum probable precipitation and flood potential.



COMMENT: If the applicant proposes to use other than maximum probable precipitation for flood hazard mitigation design criteria, other historical extreme precipitation values used for design criteria shall be provided.

(D) A general discussion of any liquid discharges, permitted or accidental, or disposals of solid waste materials which could impact the quality of surface or groundwater.

(E) A general discussion of potential project impacts on local hydrologic flows and runoff.

(F) A general discussion of the potential for flood hazard to the proposed facilities.

(G) A general discussion of potential mitigation measures to protect surface and groundwaters from project impacts, including the identification of any spill clean-up contingency plans proposed or under consideration at the time of filing of the notice.

(H) A discussion of potential project impacts on the temperature, mineral content, rate of flow, and other aspects of nearby utilized thermal springs.

(3) With respect to geology and seismicity:

(A) A general description based on existing data, including maps, of the tectonic history, fault activity, and historical seismicity within 50 km of the site, including all known or inferred potentially active and active faults, an estimate of the magnitude of MCE and MPE derived for each active fault, and the epicenter and date of any earthquake with a magnitude equal to or in excess of M4 or which could be reasonably inferred to have caused ground acceleration of greater than 0.1 G at the site.

(B) The MCE and MPE peak bedrock or ground accelerations derived for the proposed site.

(C) A brief discussion of the known stratigraphic units and significant geologic structures within 10 km of the site with emphasis on those potentially associate with geotechnical problems.

(D) A map and detailed description, based on existing data, of all recognized stratigraphic units, geologic structures, and geomorphic features or processes within the leasehold boundaries or two km of the site, whichever is greater, with emphasis on those associated with geotechnical problems in the site area. The discussion should include the following anticipated site conditions: ground rupture from faulting, mass wasting and slope stability, liquefaction or settlement, subsidence and associated ground rupture, expansion or collapse of soil structures, cavities, and other adverse site or foundation conditions.

(E) A description, with maps, of commercially developed mines, gem, mineral, and fossil collecting localities, fumaroles, geysers, hot springs, or other geologic resources of unique recreational or scientific value which may be affected by the proposed project.

(F) A detailed description, including maps showing location, of potential impacts to the geological environment resulting from construction, operation, or failure of the proposed

facilities including inducement or acceleration of mass wasting, subsidence seismicity, and fault rupture.

COMMENT: The geological environment includes, but is not limited to, developed mines, gem, mineral and fossil collecting localities, fumeroles, geysers, and thermal springs.

(G) A general description of typical mitigation measures, if any, under consideration to eliminate or reduce identified geologic hazards and impacts to the geologic environment.

COMMENT: The 2, 10 and 50 km distances in items 4, 3, and 1 respectively, are intended as guidelines, and may decrease, if reasons are given, or increase, as geologic conditions warrant.

COMMENT: Also, for purposes of the proceedings on the notice, the MCE, MPE and associated accelerations requested in items 1 through 7 above are intended to establish a common data base with respect to seismic setting and are not meant to imply proposed levels of seismic design.

Furthermore, where an applicant pursues a certification process pursuant to Section 1803(a) and files a notice early in the resource development process information related to the geologic environment may be based on existing information without performing original research and investigation.

Finally, the geotechnical information requested above is consistent with the policy adopted by the State Board of Registration for Geologists and Geophysicists on July 17, 1978.

(4) With respect to agriculture and soils:

(A) A map of soils at the site and within geothermal, the leasehold based on available soils information, and a description of mapped soils including soil erodability, soil taxonomy, and physical and chemical characteristics. The description of soils shall be sufficient to allow an evaluation of soil erodability, infiltration rate, permeability, and of the potential for leaching of pollutant deposition and cycling of pollutants in the soil-vegetation system.

(B) An assessment of the general effects of construction and operation of each proposed geothermal power plant facility on soils including, but not limited to, accelerated soil loss, soil dispersal and deposition patterns and quantities, the effects of power plant emissions on surrounding soil-vegetation systems, and the methods used to determine such effects.

(C) A discussion of the effects of construction and operation of each proposed geothermal power plant facility on agricultural resources, including the effects of cooling tower drift on crops and the removal of prime agricultural land from production. The discussion of these effects should be based on land capability classifications and storied ratings for all soil series of the proposed site.

(D) A discussion of mitigation measures under consideration to minimize effects on agricultural resources and soil-vegetation systems and to prevent off-site sediment transport.

(5) With respect to biological resources:

(A) A description of vegetational communities, general wildlife and aquatic resources, and dominant species within the area potentially impacted by the proposed project.

(B) An identification on a map and a description of the known probable distribution of fully protected, rare, threatened or endangered plant and animal species, and commercially or recreationally valued species and habitats that may be adversely affected by the project.

(C) An identification of biological species of special concern and areas of critical biological concern.

COMMENT: In the notice, an attempt shall be made to identify species of special concern and areas of critical concern that may be, or are known by the applicant to be, of special interest to: (1) local, state, and federal agencies responsible for biological resources within the area potentially biologically impacted by the project; and/or (2) educational institutions, museums, biological societies and members of the public that might have specific knowledge of the biological resources within the area.

(D) A description of the potential effects of the proposed project on legally protected and commercially and recreationally valued biological resources, species of special concern, and areas of critical biological concern.

(E) A discussion of measures proposed or under consideration to mitigate impacts to identified biological resources.

(F) A general discussion of the effects of the proposed project upon timber and forest land.

(6) With respect to noise:

(A) A land use map which identifies noise sensitive receptors or groups of receptors in the vicinity of the proposed site and related facility, and geothermal leasehold, which includes future land uses identifiable from adopted land use plans and filed development plans at the time of filing the notice.

(B) A discussion of either the results of daytime and nighttime ambient noise surveys at the site and at sensitive receptors, including the general weather conditions during the surveys, or any plans to conduct such surveys.

COMMENT: If noise concerns are likely to be a significant consideration for site acceptability due to the proximity of the proposed facilities to sensitive noise receptors, the applicant should conduct ambient noise surveys for inclusion in the notice; without such information, no conclusive findings shall be made during the proceedings on the notice regarding the acceptability of project noise impacts.

(C) A description of major plant noise sources and the estimated range of noise emission levels and characteristics.

(D) An estimation of the plant construction and operational noise levels at sensitive receptors potentially impacted by project noise.

(E) A discussion of applicable noise standards and ordinances and the general conformance of the proposed project therewith.

(7) With respect to cultural resources:

(A) A description of all cultural resource properties (archaeological, historical, paleontological, and areas of unique religious or scientific value) within the area potentially impacted by the project identifiable from a literature and reconnaissance survey.

(B) A discussion of those cultural resources listed in, declared eligible for, or nominated to the National Register of Historic Places; those resources that are listed as state or local landmarks or points of historic interest; and those resources that are otherwise protected by existing law.

(C) A description of the methodology and techniques used to identify and evaluate site area cultural resources and any plans for future studies.

(D) A description of potential impacts on identified cultural resources from construction and operation of each proposed geothermal power plant, and the measures under consideration for mitigation of such impacts.

(8) With respect to social and economic effects:

(A) A general description, with an accompanying map, of the existing and proposed future land uses of the proposed power plant site and geothermal leasehold as designated by applicable land use plans or guidelines of local, regional, state, and federal agencies; of the present and proposed land use classifications for the site, leasehold and adjoining areas which are potentially impacted by the project; and the location of municipal, county, regional, state and federal parks, recreational areas, scenic areas, wildlife sanctuaries, religious sanctuaries, or natural areas in the vicinity of the site and leasehold.

(B) A general description of the social and economic setting of the area subject to impact from the proposed project.

(C) An estimation of labor required during construction and operation of the proposed geothermal power plant and the geothermal field.

(D) An estimation of the level of temporary and permanent project-related immigration to the local area.

(E) An estimation of the impact of construction activities and project operation on the local economy and on the availability of public services and facilities fixtures.

(f) In a section entitled "Public Health Impacts," the notice shall contain the following information on the potential public health effects from the construction and operation of the proposed power plant and geothermal field:

(1) An identification, to the extent known, of solid gaseous, and water-borne emissions, such as  $SO_2$ ,  $SO_3$ ,  $NH_3$ , and B, total suspended and respirable particulates, trace metals, and radioactive materials, which may cause adverse health effects in the surrounding population.

(2) An estimation of the ambient concentrations for the pollutants identified in subsection A of this section, and the worst case incremental increase expected as a result of project emissions.

(3) A general discussion of concentrations, to the extent known, required for the creation of potentially significant adverse health effects from identified pollutants as disclosed in available literature. The discussion shall include variables due to differing age groups within the general population and portions of the general population which may be particularly affected by any identified emissions. The discussion shall also include the age distribution and size of the population which may be potentially affected by these emissions.

(4) A discussion of all existing federal, state, and local health standards for identified project emissions.

(g) In a section entitled "Power Plant Reliability" the notice shall contain the following information on site dependent reliability-related factors:

(1) A general discussion of the impact on plant reliability from potential hazards to each proposed facility caused by, but not limited to, ground rupture by faulting, mass wasting, and slope stability, liquefaction or settlement, subsidence and associated ground rupture, expansion or collapse of soil structures, cavities or other adverse foundation conditions, flooding, meteorological and climatic extremes, and cooling water supply reliability.

(2) A general discussion of performance and design criteria for protecting the facilities from potential hazards.

(3) A general description of the basis for formulation or selection of performance and design criteria discussed in subsection B of this section.

(h) In a section entitled "Electric Transmission Facilities," the notice shall contain the following information:

(1) A description of any electric transmission facilities, lines, stations, or other equipment, whether or not within the exclusive permit authority of the commission, which will be required to carry electrical power from each proposed geothermal power plant at each of the sites presented in the notice to the principal load centers to be served by the new power plant. Such description shall include the width of rights-of-way and the physical and electrical characteristics of towers, conductors, and insulators. For electric transmission facilities outside the exclusive permit authority of the commission, response to this subsection may be limited to information, such as capacity and voltage levels and right-of-way widths, which will allow the commission staff to perform an electric transmission system planning analysis and to assess the cumulative environmental impacts.

(2) A discussion of the need for the additional electric transmission lines, stations, or other equipment referred to in the notice, the basis for selecting principal points of junction with the existing electric transmission system, and the capacity and voltage levels of the proposed lines along with the basis for selection of the capacity and voltage levels.

(3) A discussion of the extent to which the proposed electric transmission facilities have been designed, planned, and/or routed to meet the transmission requirements created by

additional generating facilities planned by the applicant or any other entity in the same general area.

COMMENT: A precise definition for "general area" as used here cannot be provided. In some instances the KGRA in which the proposed geothermal power plant is to be located would comprise the "general area." In all cases the applicant should acknowledge whether or not power plants proposed in an area which could be served by common transmission to the main transmission grid where considered in determining the capacity and general route of the proposed electric transmission facilities.

(4) An identification of the owners and operators of the proposed electric transmission facilities and their legal interest in the proposed route or corridor.

(5) A discussion of alternative methods of transmitting power from each proposed geothermal power plant that were considered by the applicant, and the basis for selection of such methods.

(6) A map or maps showing the potential corridor or corridors proposed or alternative points of interconnection, and existing and proposed land uses at and adjoining the corridor(s) as designated by local, regional, state, and federal agencies.

(7) A description of the corridor or route selection process.

(8) A discussion of the physical, biological, social and cultural, environmental, and engineering advantages and disadvantages of the alternatives considered.

(9) A preliminary estimate of the costs of lines, stations, and other equipment that would be required.

(10) If the applicant does not or will not have an ownership interest in those electric transmission lines proposed to transmit power from the power plant to a point of junction with an interconnected system, a discussion of contracts executed or arrangements contemplated for the transmission of electric power from the proposed geothermal power plant.

COMMENT: Where tap lines are proposed, the discussion may be route-specific due to their limited length.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25001, 25006, 25110, 25502, 25504, 25506 and 25506.5, Public Resources Code.

## **Appendix F**

### **Informational Requirements for a Small Powerplant Exemption**

The application shall include the following information:

(a) The location of the power plant on a location map and described by section or sections, range, township, and county.

(b) Photographic representations adequately depicting proposed transmission corridors or routes and the visual appearance of the power plant site and its immediate surroundings.

(c) The type(s) of fuel to be used.

(d) The methods of construction and operation of the power plant.

(e) A discussion of the environmental and energy resources impacts which may result from the construction or operation of the power plant.

(f) A discussion of proposed alternatives to the power plant, including the alternative of no power plant, and any mitigation measures proposed to reduce environmental impact.

(g) The need for the power plant.

(h) The compatibility of the power plant with the most recent biennial report issued pursuant to Section 25309 of the Public Resources Code.

(i) A list, including the names and addresses of persons to contact, of federal, state, regional, or local agencies whose standards, ordinances, or laws including long range land use plans or guidelines adopted by the state or any local or regional planning agency are applicable to the proposed project. The list shall include a brief description of the applicability of such standards, ordinances, laws, plans, or guidelines for each agency.

(j) A discussion of that portion of the gross energy output which will be used for the site and related facility.

(k) Any other information that the applicant desires to submit.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25541, Public Resources Code.

### **Article 7. Additional Provisions for Considering Expedited Applications Under Public Resources Code Section 25550**

#### **§ 2021. Purpose of Expedited Proceeding; Applicability of Regulations.**

(a) The purpose of a six-month application proceeding is to review and certify environmentally acceptable sites and related facilities as expeditiously as possible so as to ensure a reliable supply of electrical energy in a manner consistent with public health and safety, promotion of the general welfare, and protection of the environment. Toward that end,

the commission shall give priority in review to applications that qualify for an expedited decision under this Article and demonstrate superiority with respect to environmental protection or efficiency in performance.

(b) The provisions of this Article apply to all applications filed pursuant to Public Resources Code section 25550 and 25550.5, notwithstanding any other provision to the contrary in Chapters 1, 2, and 5. This Article changes the otherwise applicable deadline for a final decision on an application for certification and adjusts other procedural deadlines as appropriate. This Article does not modify any substantive or other procedural requirements applicable to an application proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25500, 25550 and 25550.5, Public Resources Code.

## **§ 2022. Information Requirements.**

(a) Any applicant requesting that the commission reach a decision on an application for certification within six months after acceptance of the application shall meet the requirements of this section.

(b) To be eligible for a decision within six months after acceptance of an application, the application shall contain all of the information that is relevant to the project and required in Appendix B to this Chapter. If an information requirement in Appendix B is not relevant to a proposed project because of its design, location, or other particular circumstance, the application need not provide the information and, instead, shall provide an explanation with specific facts as to why the requirement is not relevant to the project as proposed. Applicants are encouraged to request a prefiling review pursuant to section 1709.5 to determine the extent to which documentation relevant to a proposed application is sufficient to meet the information requirements in Appendix B and to determine which information requirements, if not all, are relevant to the proposed application. The application shall also contain all of the following:

(1) Substantial evidence that the project as proposed in the application will comply with all standards, ordinances, and laws applicable at the time of certification, including:

(A) a list of all such standards, ordinances, and laws;

(B) information demonstrating that the project as proposed in the application will comply with all such standards, ordinances, and laws;

(C) where a standard, ordinance, or law is expected to change between the time of filing an application and certification, information from the responsible jurisdiction documenting the impending change, the schedule for enactment of the change, and whether the proposed project will comply with the changed standard, ordinance, or law; and

(D) a list of the requirements for permitting by each federal, state, regional, and local agency that has jurisdiction over the proposed project or that would have jurisdiction, but for the exclusive jurisdiction of the commission, and the information necessary to meet those requirements;

(2) substantial evidence that the project as proposed in the application will not cause a significant adverse impact on the environment, including all the following:



(A) a detailed modeling analysis assessing whether the cumulative impacts of all inert criteria pollutants (NO<sub>x</sub>, SO<sub>2</sub>, CO, and PM<sub>10</sub>) from the project's typical operating mode in combination with all stationary emissions sources within a six-mile radius of the proposed site that have received construction permits, but are not yet operational, and all stationary emissions sources that are currently undergoing air district permit application review will cause or contribute to a violation of any ambient air quality standard;

(B) a description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the consistent production of electricity for sale to the market, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be used during such tests, and air dispersion modeling analyses of the impacts of those emissions on state and federal ambient air quality standards for NO<sub>2</sub>, SO<sub>2</sub>, CO, and PM<sub>10</sub>;

(C) a detailed description of the mitigation, which an applicant shall propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule;

(D) a modeling analysis that identifies the extent of potential public exposure to toxic substances, as identified in subsection (g)(9)(A) of Appendix B, resulting from normal facility operation;

(E) if the project will result in a discharge of waste that could affect the water quality of the state, a complete report of proposed waste discharge as required by section 13260 of the Water Code. This will allow for issuance of waste discharge requirements by the appropriate regional water quality control board within 100 days after filing of the application in accordance with Public Resources Code section 25550(d).

(F) a demonstration, based on appropriate data including, but not limited to, scientific surveys taken at the appropriate time of year, that the project will have no significant impact on wetlands, plant or animal species that are endangered, threatened, or of concern under state or federal law, or the areas listed in Public Resources Code section 25527;

(G) with respect to the handling of hazardous materials, a demonstration that:

(i) the project will not use or store any regulated substance defined in Section 25532(g) of the California Health and Safety Code or

(ii) the project is eligible for Program 1 status pursuant to Section 68.10 of Part 68 of Title 40 of the Code of Federal Regulations or can demonstrate that no worst case accidental release would result in a plausibility (risk greater than 1 in 1,000,000) of an impact at the nearest public receptor above the maximum airborne concentration below which it is believed nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms that could impair an individual's ability to take protective action. The Emergency Response Planning Guidelines, Level 2 (ERPG 2) reflect this maximum airborne concentration standard.

(H) if the project will store or use a regulated substance defined in Section 25532(g) of the Health and Safety Code, a demonstration either that the boundary of the powerplant site will not be within 1000 feet of any residential area, school, general acute care hospital, long-term health care facility, or child day care facility as such terms are defined in section 25534.1

of the Health and Safety Code or that the project will pose no plausible potential for exposure at such facilities from an accidental release of the regulated substance; and

(l) a demonstration that the proposed facility will not require storage of gaseous flammable or explosive materials in quantities greater than 25000 standard cubic feet;

(3) substantial evidence that the project will not cause a significant adverse impact on the electrical system, including all of the following:

(A) an Interconnection Study identifying the electrical system impacts and a discussion of the mitigation measures considered and those proposed to maintain conformance with NERC, WSCC, Cal-ISO or other applicable reliability or planning criteria based on load flow, post transient, transient, and fault current studies performed by or for the transmission owner in accordance with all applicable Cal-ISO or other interconnection authority's tariffs, operating agreements, and scheduling protocols and

(B) a full description of the facilities, if any, that are required for interconnection, including all such facilities beyond the point where the outlet line joins with the interconnected system and a full description of the environmental setting, environmental impacts, and any recommended mitigation measures proposed by the applicant for any required facilities beyond the point where the outlet line joins with the interconnected system;

(4) a discussion of the potential for disproportionate impacts from the project on minority or low-income people; such discussion shall include, but not be limited to, all of the following:

(A) demographic information by census tract, based on the most recent census data available, showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site;

(B) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and

(C) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site;

(5) the following information to demonstrate that the project, if certified, is likely to be constructed and operated;

(A) information demonstrating the applicant's control, by ownership, lease, option, or other legally binding agreement that the Commission finds acceptable, of the proposed site and

(B) a will-serve letter or similar document from each provider of water to the project, indicating each provider's willingness to provide water to the project and describing all conditions under which the water will be provided, and a discussion of all other contractual agreements with the applicant pertaining to the provision of water to the project.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25216.5(a), 25520 and 25550(b), Public Resources Code.

### **§ 2023. Data Adequacy Review and Acceptance.**

(a) Upon the receipt of an application filed pursuant to this Article, the executive director or a delegatee shall review all documentation to determine whether the application contains all the information required by section 2022 and is, therefore, complete. Except as provided by this section the review of the application for completeness shall be in accordance with section 1709.

(b) No later than 45 days after receipt of an application, the commission shall act upon the executive director's recommendation as to whether the application contains the information required by section 2022 and is, therefore, complete. If the commission determines that the application is complete, the application shall be accepted as of that date and the proceeding for reaching a final decision within six months shall begin. Based on meeting the information requirements of section 2022, the application shall be considered to be an initial showing that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, and laws.

(c) If the commission determines that the application contains all of the information required by Appendix B to this Chapter, but not all of the additional information required by section 2022, the application shall be deemed accepted for purposes of reaching a final decision within 12 months. The applicant, however, may request an immediate suspension at the time of acceptance for a 12-month decision to allow for the submittal of additional information to meet the requirements of section 2022(b)(1) through (5). If the applicant makes such a request, the commission shall specify in writing what information is needed to complete the application for a six-month decision.

(d) If the commission determines that the application is incomplete with respect to Appendix B to this Chapter, the application shall not be accepted. The commission shall indicate in writing those parts of the application that fail to meet the information requirements and the manner in which they can be made complete.

(e) The applicant may file additional information and the commission, in accordance with section 1709, shall determine, within 30 days of receipt of the data, whether the information is sufficient to complete the application. The application shall be eligible for a final decision within six months from the day the commission determines that the application is complete pursuant to section 2022.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25522(b) and 25550, Public Resources Code.

### **§ 2024. Intervention.**

Any person may file a petition to intervene within 100 days after the acceptance of an application. The petition shall be served upon all parties.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25214 and 25550, Public Resources Code.

## **§ 2025. Discovery.**

Within 90 days after acceptance of the application, any party may file a data request of the applicant or of any other party. Absent an objection pursuant to section 1716(f), the applicant or other party shall provide the information requested within 20 days of the date that the request is made or by another date agreed to by the requesting and responding parties or ordered by the committee.

Note: Authority cited: Section 25213 and 25218(e), Public Resources Code. Reference: Sections 25210, 25519(b) and 25550, Public Resources Code; and Section 11181, Government Code.

## **§ 2026. Agency Comments.**

(a) Within 60 days after the acceptance of an application under this Article, the California Independent System Operator or other interconnecting authority and all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their preliminary approval, comments, determinations, and opinions.

(b) Within 100 days after the acceptance of an application, all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their final comments, determinations, and opinions.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25519(f), 25519(j), 25523(d) and 25550, Public Resources Code.

## **§ 2027. Staff Reports.**

(a) Within 75 days after acceptance of an application that is eligible for a six-month decision, the staff shall file an initial report of the environmental impacts and other aspects of the proposed project in accordance with sections 1742.5, 1743, and 1744. Based on information known and available to the staff, the staff's initial report shall:

(1) discuss whether the project complies with all applicable standards, ordinances, and laws,

(2) identify and assess the impacts that may result from the project on the environment,

(3) identify and assess the impacts that may result from the project on the electrical system,

(4) assess the sufficiency of the mitigation as proposed by the applicant,

(5) recommend mitigation where the staff believes it is needed in addition to or as an alternative to that proposed by the applicant,

(6) discuss the feasibility of available site and/or facility alternatives that substantially lessen the significant adverse impacts of the project on the environment, and

(7) identify the areas in need of further analysis that will be the focus of the final staff report on the project.

(b) Within 120 days after the acceptance of an application, the staff shall file a final report on the proposed project in accordance with sections 1742.5, 1743, and 1744. The staff's final report may focus on those areas identified for further analysis in the staff's initial report and may incorporate by reference or otherwise rely on the initial report for all other areas. The report shall serve as the staff's final assessment of the project and be presented as testimony at the hearings under section 2029.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 21081, 25217(b), 25519(c), 25523(a), 25523(d) and 25550, Public Resources Code.

#### **§ 2028. Removal of the Project from the Six-Month Process.**

(a) At any time after acceptance of the application, but no later than the final date for filing testimony, any party may petition the committee to remove the project from the provisions of this Article and thereby change the deadline for a commission decision from six months after acceptance to twelve months after acceptance. The petition shall show that there is substantial evidence in the record that the project:

- (1) may result in a significant adverse unmitigated impact on the environment;
- (2) may result in a significant adverse unmitigated impact on the electrical system;
- (3) will not comply with an applicable standard, ordinance, or law; or

(4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.

The petition and other pleadings shall be served on all parties in accordance with sections 1209 and 1210.

(b) Any person, or if the petition is filed more than 100 days after acceptance of the application, any party, may comment on the petition in writing within 10 days after the petition is served.

(c) Within 20 days after filing of the petition, the committee shall determine whether there is substantial evidence in the record that the project:

- (1) may result in a significant adverse unmitigated impact on the environment;
- (2) may result in a significant adverse unmitigated impact on the electrical system;
- (3) will not comply with an applicable standard, ordinance, or law; or

(4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.

(d) If the committee's determination with respect to subsection (1), (2), or (3) is in the affirmative, the committee shall grant the petition and order that the application shall no longer

be reviewed under this Article and that a final decision on the application shall be reached within 12 months of acceptance of the application in accordance with Public Resources Code section 25540.6.

(e) If the committee's determination with respect to subsection (4) is in the affirmative, the committee may, but need not, grant the petition.

(f) The committee's grant or denial shall be effective 5 days after it is filed in the Docket and served on all parties, unless it is appealed under subsection (g), in which case the ruling is stayed until the Commission rules on it.

(g) Any party may appeal the committee's ruling within 5 days after it is filed in the Docket and served on all parties. The commission shall rule on an appeal at the next earliest business meeting for which there is sufficient time for public notice of the appeal as an item on the agenda. In ruling on the appeal the commission shall use the criteria in subsection (c).

(h) The time between a committee ruling on a petition and final commission disposition of the matter shall not be counted in the calculation of any deadlines pursuant to this Article.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 25550(c), Public Resources Code.

#### **§ 2029. Hearings.**

(a) Within 135 days after acceptance of the application, the committee shall commence evidentiary hearings.

(b) Any party may submit testimony in accordance with a schedule determined by the committee.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25216.5(a), 25521 and 25550, Public Resources Code.

#### **§ 2030. Presiding Member's Proposed Decision; Commission Decision.**

(a) Within 20 days after the end of the hearings held under section 2029, the presiding member of the committee shall, in consultation with the other committee member, file in the Docket and serve on all parties a proposed decision in accordance with sections 1749, 1751, 1752(b) through (k) and (m), 1752.3(a) and (b), and 1752.5.

(b) Within 15 days after filing and service of the presiding member's proposed decision, any person may file and serve written comments.

(c) At least 30 days after filing and service of the presiding member's proposed decision, the commission shall hold a hearing and do one of the following:

(1) grant a certificate to the project,

(2) deny the application for certification, or

(3) determine, using the criteria in Section 2028(c), that a final decision on the application shall be made within twelve months of its acceptance.

(d) The Commission shall not grant a certificate unless it finds that:

(1) the project will not cause a significant adverse unmitigated impact on the environment,

(2) the project will not cause a significant adverse unmitigated impact on the electric system,

(3) the project will comply with all applicable standards, ordinances, and laws,

(4) the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the project, and

(5) the project complies with all regulations adopted by the Commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 21081, 25216.5(a), 25519(c), 25523 and 25550, Public Resources Code.

#### **§ 2031. Construction Deadline.**

(a) The deadline for the commencement of substantial construction of the project shall be 12 months after the effective date of the decision on an application accepted and processed pursuant to this Article.

(b) Substantial construction shall be defined as the following:

(1) completion of at least thirty percent of the engineering design of the entire project and

(2) completion of at least five percent of the physical construction of the entire project, absent circumstances beyond the control of the applicant.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Sections 25216.5(a), 25523(a), 25550 and 25550(f), Public Resources Code.

## **CHAPTER 6. ENVIRONMENTAL PROTECTION**

### **Article 1. Implementation of the California Environmental Quality Act of 1970**

#### **§ 2301. Purpose.**

These regulations specify the objectives, criteria, and procedures to be followed by the Commission in implementing the California Environmental Quality Act of 1970. (Public Resources Code Sections 21000 et seq.) ("CEQA"). These regulations should be read in conjunction with the State EIR Guidelines, as they are supplemental to and not repetitive of the Guidelines.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21082, Public Resources Code.

#### **§ 2305. Initial Study.**

Where an Initial Study is necessary, it will be available for public access and inspection either in the Negative Declaration or incorporated into a draft EIR, depending upon its findings on significant effect.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21105, Public Resources Code.

#### **§ 2306. Negative Declaration.**

Where a Negative Declaration is prepared, its completion and availability shall be announced in one or more newspapers of general circulation chosen on the basis of providing the most effective public notice.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21092, Public Resources Code.

#### **§ 2308. Fees for EIR or Negative Declaration Expenses.**

The executive director shall charge and collect a reasonable fee from any person proposing a project subject to CEQA to cover the estimated actual cost of preparing a Negative Declaration or an EIR. The deposit shall not be in excess of three percent (3%) of the estimated capital cost of the proposed project.

(a) The Commission staff shall separately account for the deposit collected and the charges thereto. The status of the account shall be provided to the project proponent at regular intervals established by mutual agreement. The executive director shall request additional deposits if the initial deposit has been exhausted. A final accounting shall be rendered by the Commission staff after the final EIR or Negative Declaration has been certified or adopted.

(b) If in the final accounting the deposits exceed the actual costs incurred by the Commission, the excess shall be refunded. If the actual costs exceed the amount of the deposits, the project proponent shall be billed for the difference.



(c) The executive director may adjust or waive deposits for minor projects. For projects with an estimated capital cost of more than \$1,000,000, the executive director shall permit payment of the deposit in increments.

(d) The executive director should collect the deposit prior to the preparation of environmental documents and no final EIRs or Negative Declarations shall be certified until the project proponent has reimbursed the Commission for the costs of preparing and processing them.

(e) Where a staged EIR is prepared the executive director shall collect a deposit sufficient to cover the expenses of each stage of the EIR before each stage is commenced. Such deposits shall be accounted for in the manner described in subsection (a) of this section, and a final accounting shall be rendered upon completion of each stage of the EIR at the request of the project proponent.

Note: Authority cited: Sections 21082 and 25213, Public Resources Code. Reference: Section 21089, Public Resources Code.

## **Article 2. Designation of Transmission Corridor Zones**

### **§ 2320. Scope and Objectives of Designation Process.**

(a) The provisions of this article shall apply to the consideration of a motion by the commission or an application by a person to designate a transmission corridor zone under Public Resources Code section 25331.

(b) The main objectives of the designation process are as follows:

(1) To identify appropriate corridors for transmission planning, taking into consideration the state's principles of encouraging the use of existing rights-of-way, the expansion of existing rights-of-way, and the creation of new rights-of-way in that order;

(2) To identify appropriate corridors for transmission planning, consistent with the state's needs and objectives as set forth in the most recently adopted strategic plan under Section 25324 of the Public Resources Code applicable at the time an application is filed or a motion made by the commission;

(3) To prepare an environmental assessment of each proposed corridor, taking into account a reasonable range of alternatives and feasible ways to mitigate or avoid foreseeable significant environmental impacts, such that the environmental assessment informs and makes more efficient the licensing process that later considers whether to permit a transmission project within a designated corridor;

(4) To coordinate the state's designation of corridors with existing or proposed federal corridors identified under Section 368 of the Federal Energy Policy Act of 2005 (Pub.L. No. 109-58 (Aug. 8, 2005) 119 Stat. 594.) or contained within adopted federal land use plans so that the state and federal designations result in continuous corridors to the extent practicable;

(5) To work with local governments through whose jurisdictions a transmission corridor is proposed such that each designation takes into account local concerns, recommendations,

and adopted land use designations and results in the cooperation of local governments that consider designated corridors when taking actions to amend general and specific land use plans; and

(6) To provide a forum for public participation, public hearings, and the determination of factual and other issues based on the evidence of record in the proceeding.

(c) For purposes of this article, applicants who plan to construct a high-voltage electric transmission line include persons who plan to upgrade an existing electric transmission line that is under the operational control of the California Independent System Operator or would result in an operating voltage of 200 kV or more.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 25330—25341, Public Resources Code.

### **§ 2321. Information Requirements**

An application to designate a transmission corridor zone shall include an environmental assessment of all reasonably foreseeable impacts that would result from the designation of the proposed corridor for the construction of at least one future high-voltage electric transmission line. The environmental assessment shall contain all the information specified in Appendix A of this article.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21003.1, 21080.1, 25331, 25332, Public Resources Code.

### **§ 2322. Format and Number of Copies**

Paper copies of applications and any other documents attached thereto shall conform to the requirements of Sections 1209 and 1705. An application shall be filed in electronic format in conformance with section 1209.5. In addition, the applicant shall file with the commission one hundred twenty-five (125) paper copies of an application for designation and all drawings, photographs, maps, diagrams, charts, graphs, and other documents attached to the application. Alternatively, the applicant may file 75 paper copies and 50 copies in a CD-ROM medium and in the format specified in Section 1209.5, unless otherwise specified by the executive director under section 1209.5, subdivision (c).

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25331(b), Public Resources Code.

### **§ 2323. Review and Acceptance of Application.**

(a) Upon receipt of an application for designation under this Article, the staff shall review the information contained in the application to determine if it provides all the information specified in section 2321.

(b) No later than 30 days after receipt of an application, the executive director, based on the staff's review, shall submit his or her recommendation to the commission as to whether the application contains the information specified in section 2321 and is, therefore, complete.

(c) No later than 45 days after receipt of an application, the commission shall act upon the executive director's recommendation as to whether to accept the application as complete, based on the application containing all the information specified in section 2321. If the commission determines that the application is complete, the application shall be accepted as of that date and the proceeding for considering whether to designate the proposed corridor shall begin.

(d) If the commission determines that the application is incomplete, it shall specify in writing the deficiencies based on section 2321 and the application shall not be accepted.

(e) After the commission has acted on the executive director's recommendation, even if the application is determined to be incomplete, the commission shall consider whether to assign a committee at that time to preside over the proceeding on the application for designation of a transmission corridor zone. The commission shall otherwise assign a committee at the time it determines the application to be complete. If a committee is assigned and the application is incomplete, the executive director, based on the staff's recommendation, shall notify the assigned committee, rather than the commission, when the applicant has submitted all required information based on section 2321 and the commission's list of deficiencies. The committee, rather than the commission, shall then be responsible for determining whether subsequent information provided by the applicant completes the application in the manner specified by the commission.

(f) The applicant may file additional information to complete the application by curing the deficiencies that the commission has specified in writing. No later than 30 days after receipt of all the data that is filed to complete the application, the commission or a committee, if one has been assigned, shall determine whether the application is complete based on section 2321. If determined to be complete, the application shall be accepted as of the date the commission or committee so determines and the proceeding for considering whether to designate the proposed corridor shall begin.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25331, Public Resources Code.

#### **§ 2324. Public Notification.**

(a) As soon as practicable and, in any event, no later than ten days after an application is determined to be complete or the commission on its own motion proposes to designate a corridor, the staff shall do the following:

(1) arrange for the publication of a summary of the application and a brief description of the commission's review process in a newspaper of general circulation in each county where a transmission corridor zone and any alternatives are proposed to be located;

(2) notify all property owners who are within or adjacent to a proposed transmission corridor zone;

(3) notify and transmit a copy of the application to the Electricity Oversight Board, the California Public Utilities Commission, the California Independent System Operator, the Native American Heritage Commission, and all California Native American tribes, City Managers, County Chief Executive Officers, Planning Commission Chairpersons, representatives of state and federal agencies, transmission load-serving entities, and transmission owning local publicly

owned electric utilities, as defined in Section 9604(d) of the Public Utilities Code, having a jurisdictional interest in the proposed transmission corridor zone;

(4) publish the application on the commission internet web site; and

(5) notify members of the public, including landowners notified under subsection (2), that the application is available on the commission's web site.

(b) Notification under subsection (a) shall include a summary of the application, a brief description of the commission's review process, including the role of the assigned committee, and the objectives of the strategic plan with which the proposed transmission corridor must be consistent.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25334, Public Resources Code.

### **§ 2325. Coordination with Interested Agencies, Intervention, and Public Participation.**

(a) The notice to governmental entities, including California Native American tribes, referred to in subsection (b) of section 2324 shall also serve to request information about their land use plans, existing land uses, and other matters in which they have expertise or interest with respect to the proposed transmission corridor or an alternative corridor. All requested information shall be provided within 30 days of the date the notice is sent, unless a later time is requested by a governmental entity and agreed to by the staff.

(b) Upon receipt of information in response to the request under subsection (a), the staff shall use the information to confer as needed throughout the proceeding with interested governmental agencies and tribal governments to discuss their land use plans, areas of expertise, concerns, and recommendations with respect to the proposed transmission corridor or an alternative.

(c) Any person may file a petition to intervene under section 1207 in a designation proceeding, but must file the petition no later than 15 days after the staff issues the draft environmental report. The petitioner shall also serve the petition upon the applicant. The presiding member may grant a petition to intervene filed after the deadline only upon a showing of good cause by the petitioner. A person whose petition is granted shall have all the rights and duties of a party under these regulations. Any person whose petition to intervene has been denied by the presiding member may appeal the decision in the manner provided by section 1207(d). Any intervener may withdraw from a proceeding by filing a notice to such effect with the Docket Unit.

(d) A petition to intervene, however, shall not be necessary for a person to participate informally in any or all aspects of a designation proceeding. Any person may participate by requesting to be notified of the proceeding's public events, attending public workshops, hearings, and other publicly noticed meetings, and offering oral and written comments on the proposed corridor, environmental assessment, and other matters that are the subject of public review.

(e) The rules governing ex parte communications under section 1216 shall apply to proceedings conducted under this article.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25334, Public Resources Code.

### **§ 2326. Reimbursement**

(a) An applicant who files an application for designation of a transmission corridor zone shall submit with the application a fee that the executive director estimates will reimburse the commission for all costs associated with reviewing the application. The commission staff shall separately account for the deposit collected and the charges against it. The status of the account shall be provided to the applicant at regular intervals agreed to by the applicant. The executive director shall request additional deposits if the initial deposit has been exhausted. A final accounting shall be provided by the commission staff after the commission's final decision on the application. If the final accounting shows that the deposits exceed the actual costs incurred by the commission, the difference shall be refunded to the applicant. If the actual costs exceed the deposits, the applicant shall be billed for the difference.

(b) Upon receiving the commission's request for review of a proposed transmission corridor zone, a city or county may request a fee, except as provided under subsection (d), to cover the actual and added costs of review and the commission shall pay this amount to the city or county, provided the city or county follows the procedures set forth in section 1715.

(c) Alternatively, an applicant may establish an account directly with a city or county seeking reimbursement and, through the account, reimburse the city or county directly for its actual and added costs of reviewing the applicant's proposed transmission corridor zone. In any case, an applicant shall be allowed to review any invoice submitted by a city or county for reimbursement.

(d) A city or county participating as a formal intervenor to a designation proceeding shall not be eligible for reimbursement under this section.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21089, 25334(d) and (e), and 25538, Public Resources Code.

### **§ 2327. Requests for Information.**

(a) With respect to an application for designation or a motion by the commission to designate a transmission corridor zone, any party, i.e., staff, applicant, and intervenors, may request from another party such information as is reasonably available to the party being requested and is relevant to the proceeding or reasonably necessary to complete an environmental report in accordance with the California Environmental Quality Act and assess the need for the proposed corridor and its conformance with the strategic plan. Requests for information shall be based on the level of information that can reasonably be expected to be available at the relatively early stage of designating a corridor for planning purposes as compared to the later stage of permitting a specific transmission project. Section 1716 shall govern the exchange of requests for information and responses, objections to a request, and petitions for an order to compel a response. All requests for information shall be submitted no later than 180 days from the date the application is determined to be complete, unless the committee allows a later date for good cause shown.

(b) In formulating its requests for information from the applicant or other sources, the staff shall confer with interested agencies, the Native American Heritage Commission, and California Native American tribal governments regarding the information they believe the applicant or a relevant source should provide for the staff's environmental assessment of the proposed designation.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25334, Public Resources Code.

### **§ 2328. Informational Hearing and Scoping Meeting.**

(a) Within 45 days of the commission filing a motion or determining an application is complete, an assigned committee shall conduct one or more informational hearings in the county or counties in which the proposed transmission corridor would be located.

(b) The assigned committee shall arrange for public notice of the informational hearings to be published no later than 10 days in advance of the initial hearing. The notice shall request all interested governmental entities and members of the public, particularly owners of property within or adjacent to the proposed transmission corridor zone, to provide comments on the suitability of the proposed transmission corridor zone with respect to environmental, public health and safety, land use, economic, and transmission-system impacts or other relevant factors on which they may have expertise.

(c) The purpose of the informational hearings shall be to do all of the following:

(1) In a presentation by the applicant, or by the staff in a case initiated by the commission's motion, provide information and answer questions to explain the transmission corridor zone that is being proposed for designation;

(2) Explain the commission's designation process, the staff's role in preparing an environmental report, the opportunities for public and agency participation, and any other matter that informs the public about the designation process and its purpose.

(3) Explain the state's needs and long-term planning objectives in the applicable Strategic Plan and the Plan's relevance to the transmission corridor zone being proposed for designation;

(4) Serve as a scoping meeting for the environmental review of the proposed transmission corridor zone by receiving comments on its suitability with respect to environmental, public health and safety, land use, economic, and transmission-system impacts and other relevant factors on which a governmental entity or an interested person may have expertise; and

(5) Solicit factual information, recommendations, and suggestions on reasonable alternatives that could avoid or mitigate potentially significant environmental impacts associated with the proposed transmission corridor. An alternative shall be considered reasonable if it meets one or more of the state's needs and objectives that the proposed corridor for designation proposes to meet in accordance with the applicable Strategic Plan, is feasible as that term is defined in section 1702(f), and offers a way to mitigate or avoid one or more potentially significant environmental impacts associated with the proposed transmission corridor.

(d) Within 15 days of the informational hearing, the assigned committee shall issue an order regarding the type and scope of environmental review to be conducted, the estimated schedule of events in the remainder of the proceeding, and any other matter relevant to the proceeding the committee sees fit to include.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21080.1, 21080.3, 21104, and 25335, Public Resources Code.

#### **§ 2329. Preparation of Environmental Report, Need Assessment, and Staff's Role.**

(a) The staff shall be responsible for independently preparing a draft and final environmental report on the proposed transmission corridor zone, taking into account the applicant's environmental assessment in the application, all relevant information received from interested government entities, and written comments from members of the public regarding potential impacts, feasible mitigation, and reasonable alternatives.

(b) The staff shall also be responsible for independently assessing the need for the proposed transmission corridor and whether it conforms with the latest adopted strategic plan.

(c) Issues that may arise related to the final environmental report and the assessment of need and conformance with the strategic plan shall be the subject of one or more hearings under section 2332.

(d) The staff shall hold one or more public workshops to try to resolve issues and to solicit information from governmental entities, property owners within or adjacent to the proposed corridor, and other interested members of the public.

(e) The staff may independently prepare an initial report on the proposed corridor to identify potential issues for the informational hearings under section 2328 and as a way to help focus the draft environmental report.

Note: Authority cited: Section 25218(e), Public Resources Code; and section 15025, Title 14, California Code of Regulations. Reference: Sections 21080.1, 21082.1, 21100, 25332, 25336 and 25337, Public Resources Code.

#### **§ 2330. Publication of the Environmental Report, Need Assessment, and Public Review.**

(a) Within 120 days of the final informational hearing under section 2328, the staff, in consultation with interested government entities and in consideration of all comments and information received at the informational hearings and workshops, shall publish a draft environmental report on the proposed designation and an assessment of need for the proposed corridor and its conformance with the latest adopted strategic plan. The staff shall post the draft report and assessment on the commission's website, provide a copy of the draft report to the state Clearinghouse as appropriate, and notify all interested government entities and the public of the availability of the environmental report on the commission's website.

(b) There shall be a public comment period of at least 45 days from the posting of the draft environmental report on the commission's website.

(c) Within 30 days after the conclusion of the public comment period for the draft environmental report, the staff shall independently publish a final environmental report, including responses to written comments received on the draft report, and its final assessment of need for the proposed corridor and its conformance with the latest adopted strategic plan.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21082.1, 21091, 25332 and 25337, Public Resources Code; and Sections 15084, 15086, 15087, 15088 and 15089, Title 14, California Code of Regulations

### **§ 2331. Prehearing Conference and Hearing Order.**

(a) Within 35 days, but no sooner than 15 days, after the issuance of the final environmental report, the assigned committee shall hold a prehearing conference to determine the issues to be considered in one or more hearings and the dates of the hearings.

(b) The assigned committee shall arrange for public notice of the prehearing conference to be published no later than 14 days in advance of the prehearing conference. The notice shall request all parties to prepare a prehearing conference statement identifying the issues they believe should be the subject of a hearing and any other matter the committee deems reasonable to request.

(c) Within 15 days of the prehearing conference, the assigned committee shall issue a hearing order setting forth the issues to be heard at one or more hearings, including issues, if any, regarding reasonable alternatives to the proposed transmission corridor zone, the need for the proposed corridor, and the extent to which the proposed corridor conforms with the applicable strategic plan, the date(s) and location(s) of the hearing(s), the filing date for written testimony, other submittals, and public comments, and any other matter that the assigned committee has the authority to address or regulate under section 1203.

(d) The issue of conformity with the strategic plan shall include a demonstration based on substantial evidence of the need for the proposed corridor. The basic issue of need for a corridor shall first be considered in a proceeding on the strategic plan under Section 25324 of the Public Resources Code.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25336, Public Resources Code.

### **§ 2332. Hearings and Record.**

(a) The assigned committee shall conduct hearings to receive testimony as defined in section 1201, public comments, and other information on issues that the prehearing conference order identifies.

(b) The hearings shall be conducted in accordance with section 1212 regarding rules of evidence and the cross examination of witnesses.

(c) All testimony, cross examination of witnesses, information, and comments received at a hearing shall become the record of the proceeding.



(d) The record shall be the basis upon which to make findings and conclusions in accordance with Public Resources Code section 25337 and as specified in section 2334.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21082.2, 25336 and 25337, Public Resources Code.

### **§ 2333. Proposed Decision.**

(a) Within 60 days of the conclusion of hearings under Section 2332, the assigned committee shall issue a proposed decision based on consideration of the final environmental report, together with the entire hearing record in the proceeding. The proposed decision shall contain the committee's responses to comments received at the hearing(s) held under Section 2332.

(b) The proposed decision shall be subject to no less than a 20-day public review period.

(c) The assigned committee may hold a hearing to receive comments and recommendations on the proposed decision in advance of the adoption hearing before the full commission on the proposed decision.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21081, 21081.5 and 25337, Public Resources Code.

### **§ 2334. Findings and Conclusions.**

The proposed decision shall contain a recommendation on whether to designate the proposed transmission corridor zone and shall include proposed findings and conclusions on each of the following:

(a) whether the proposed transmission corridor zone conforms with the applicable strategic plan adopted pursuant to Section 25324 of the Public Resources Code;

(b) whether the proposed corridor zone is consistent with land uses within and adjacent to the corridor and with applicable land use plans adopted by local, regional, state, or federal governments;

(c) whether there exists within or adjacent to the proposed transmission corridor zone any notable areas of sensitivity such as local, state, or regional parks, wilderness, scenic, or natural reserves, areas for wildlife protection, estuaries, and areas for recreation or historic preservation;

(d) the extent to which the proposed designation and possibility of one or more transmission-line projects being built within the designated corridor would cause any reasonably foreseeable significant adverse impact on the environment, public health and safety, land use, the state's economic interest, the state's electric transmission system, or any other relevant matter;

(e) whether there are feasible means of mitigating or avoiding any of the significant adverse impacts identified with the proposed designation;

- (f) any changes or modifications to the proposal that the commission should require;
- (g) whether there are feasible alternatives that are preferable to the proposed corridor;  
and
- (h) any other matter that the committee considers relevant to the commission's decision on whether to designate the proposed transmission corridor zone.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21081, 21081.5, and 25337, Public Resources Code; and Sections 15091 and 15092, Title 14, California Code of Regulations.

### **§ 2335. Final Decision and Hearing.**

(a) Before adopting a final decision, the commission shall adopt or certify as appropriate the final environmental report by finding each of the following:

(1) The final environmental report has been completed in compliance with the California Environmental Quality Act.

(2) The commission has reviewed and considered the information in the final environmental report before approving the designation.

(3) The final environmental report reflects the independent judgment of the commission.

(b) The commission shall hold a final hearing to receive final comments and recommendations on the proposed decision and accompanying documents. At the conclusion of the hearing, the commission shall adopt a final written decision that conforms with Section 25337 of the Public Resources Code and contains the findings and conclusions specified in section 2334.

(c) The commission may not designate a proposed corridor with one or more significant adverse environmental impacts unless it finds both of the following:

(1) There are feasible means of mitigating or avoiding the significant adverse environmental impacts and those means have been required or incorporated in the proposed designation.

(2) With respect to matters not within the commission's authority, but within the authority of another agency, that changes or alterations required to mitigate such impacts have been or can and should be adopted by such other agency.

(d) If the commission cannot make the findings in subsection (c), then it may not designate a transmission corridor zone unless it makes the following two findings:

(1) Specific economic, social, or other considerations make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(2) The benefits of the designation outweigh the unavoidable significant adverse environmental impacts associated with the designation of the proposed transmission corridor zone.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21081, 21092 and 25337, Public Resources Code; and Sections 15090, 15091, 15092 and 15093, Title 14, California Code of Regulations.

#### **§ 2336. Notification of a Designated Corridor.**

As soon as practicable after the commission designates a transmission corridor zone, it shall post a copy of its decision on its Internet Web site, send a copy of its decision, including a description of the transmission corridor zone, to the City Manager, County Chief Executive Officer, and Planning Commission Chairperson of each affected city and county and to representatives of each affected state and federal agency, and notify property owners within or adjacent to the corridor of the availability of the decision on the commission's Internet Web site.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25338, Public Resources Code.

#### **§ 2337. Use of a Designated Corridor.**

Any person who proposes to construct a high voltage transmission line within a designated corridor shall include the environmental assessment for the designated corridor and the commission's final decision on the corridor as part of the application to the agency that has permitting authority over the transmission-line project.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 15006, 15153, 15167, and 15168, Title 14, California Code of Regulations.

#### **§ 2338. Catalogue of Environmental Reports for Designated Corridors.**

The staff shall compile and maintain in electronic format the commission's environmental reports on all transmission corridors designated under this article and shall make available upon request the relevant copy for inclusion in an application to construct a high-voltage transmission line within a designated corridor.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25339, Public Resources Code.

#### **§ 2339. Review of Designated Corridors.**

Upon request or upon its own initiative, the commission may review and revise as necessary its designated transmission corridor zones in accordance with the procedural requirements of this article, but shall review not less than once every 10 years. Designated corridors shall be identified in each strategic plan prepared under Section 25324 of the Public Resources Code.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25339, Public Resources Code.

## **§ 2340. Application of CEQA**

Nothing in this article shall preclude the use of an exemption under the California Environmental Quality Act or the preparation of a negative declaration or mitigated negative declaration in accordance with that Act where the facts pertaining to a proposed transmission corridor zone do not support a fair argument otherwise. Every application shall nevertheless be subject to the same procedural requirements for an informational hearing, prehearing conference, one or more evidentiary hearings as needed, a proposed decision, and a final decision.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 21080.1 and 25332, Public Resources Code.

## **APPENDIX A**

### **Information Requirements for a Corridor Designation Application<sup>1</sup>**

#### **(a) Executive Summary**

In a section entitled, "Executive Summary," the application shall contain:

- (1) a general description of the proposed transmission corridor, its location, the region in which it is proposed to be located, the immediate vicinity, and the transmission facilities anticipated to be within the corridor;
- (2) a summary of the need for the proposed corridor based on the state's needs and objectives as set forth in the latest adopted strategic plan under Section 25324 of the Public Resources Code and any other relevant information provided in the application;
- (3) a summary of reasonably foreseeable impacts to the environment or to public health and safety associated with the proposed designation of the corridor for a high-voltage electric transmission line; and
- (4) a summary of mitigation measures proposed to avoid or minimize any such impacts to the environment or to public health and safety.

#### **(b) Project Description**

In a section entitled, "Project Description," the application shall contain:

- (1) a detailed description of the proposed transmission corridor, identifying the corridor's geographic location, direction, length and width;
- (2) a detailed description of the setting of the proposed transmission corridor zone;

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<sup>1</sup> The requirements in this Appendix apply also to a motion by the Energy Commission to designate a transmission corridor zone.

(3) maps\* depicting the region, the vicinity, the proposed transmission corridor, and its immediate surroundings at a scale of 1:24,000 (or another appropriate map scale agreed to by staff), and showing developed areas, including demographic data and location(s) of low-income and minority populations in the vicinity of the proposed corridor, major infrastructure, parks, recreational areas, scenic areas, existing transmission lines within one mile of the center line of the proposed corridor; and any other matters the applicant may wish to include;

(4) full-page color reproductions of photographs showing the features and characteristics of the area within and alongside the proposed corridor;

(5) the center line of the proposed transmission corridor identified by mileposts at appropriate distances and the beginning and ending longitude and latitude of each segment between the mileposts in the proposed corridor; and,

(6) in an appendix to the application, a list of current assessor's parcel numbers and owners' names and addresses for all parcels within and out to 500 feet of the outer boundaries of the proposed transmission corridor.

\*All maps depicting the proposed transmission corridor in the application shall show the proposed corridor's center line and outer boundaries and shall conform with the format requirements for such documents under Sections 1209 and 1705.

### **(c) Conformity with Strategic Plan and Need**

In a section entitled, "Conformity with Strategic Plan and Need for Corridor," the application shall contain:

(1) the planning timeframe for the transmission project(s) anticipated to be within the corridor zone proposed for designation;

(2) the objective(s) of locating one or more transmission projects within the proposed corridor zone, for example, to access renewable resources, facilitate bulk power transactions, reliably and efficiently serve projected load growth, coordinate with corridors designated under Section 368 of the Federal Energy Policy Act of 2005, or address issues of National Interest Electric Transmission Corridors designated under Section 1221 of the Federal Energy Policy Act of 2005;

(3) a discussion of how each stated objective relates to the applicable strategic plan based on the following:

(A) a discussion of the transmission capacity additions, transmission corridors, and planning timeframes described in the latest strategic plan adopted pursuant to Section 25324 of the Public Resources Code that relate to the transmission corridor zone proposed for designation and

(B) a discussion of the conformity of the proposed transmission corridor zone with all related aspects of the latest adopted strategic plan;

(4) a general description of the transmission facilities that the applicant anticipates would be within the corridor zone, including power lines and voltages, substations, switchyards and other facilities and the reasons for selecting the facilities described;

(5) a discussion of the expected load growth, capacity, and energy levels for the planning timeframe of the transmission project anticipated within the proposed corridor zone;

(6) a discussion of new generating resources and other electricity supplies that are likely to be available in the load area as an alternative to transmission expansion in the planning timeframe and could serve the expected load growth in a manner consistent with the state's energy policies or a discussion of the constraints to the development of local generation resources;

(7) a discussion of the expected energy efficiency and demand reduction measures, as identified in the latest adopted Integrated Energy Policy Report, that are likely to be available in the planning timeframe and could serve as an alternative to transmission expansion;

(8) a discussion of the California Independent System Operator's latest transmission planning results and, if available, the relevant Western Electricity Coordinating Council Regional Planning and Facility Rating Process results, the transmission plans of local publicly owned electric utilities, and other transmission planning studies that have a material bearing on the need of the transmission project(s) that the applicant anticipates within the proposed corridor zone in the planning timeframe; and

(9) a discussion of the need for the proposed corridor zone to achieve the stated objective(s) in subsection (2), given the potential for supply, demand, and efficiency alternatives discussed in subsections (6) and (7) that could also serve the same objective(s).

#### **(d) Corridor Alternatives**

In a section entitled, "Corridor Alternatives," the application shall contain:

(1) identification of a reasonable range of alternative corridors that could achieve the basic objectives of the proposed corridor;

(2) a discussion of how the proposed corridor and alternatives were selected, the criteria used to reject alternatives, and an explanation why the proposed corridor is superior to the alternatives; and

(3) a screening-level analysis of a reasonable range of alternative corridors, considering the impacts of each alternative on visual resources, land use, biological resources, cultural resources, and any other impacts that could be significant. Alternatively, an application may provide justification for why there are no feasible alternatives that might reasonably be considered for the proposed corridor.

#### **(e) General Environmental Information Requirements**

An application for designation of an electric transmission corridor zone shall provide information addressing potential direct, indirect, and cumulative impacts in all the subject areas identified in the following sections for the proposed transmission corridor zone. The required information shall be provided in sufficient detail to allow determination of the suitability of the proposed transmission corridor zone with respect to reasonably foreseeable environmental, public health and safety, land use, and economic impacts from the future construction, operation, and maintenance of a transmission line within the corridor zone. With respect to potentially

significant impacts, each technical area shall also discuss mitigation measures and any monitoring plans to verify the effectiveness of the mitigation.

**(f) Water and Soil Resources**

In a section entitled, "Water and Soil Resources," the application shall include:

- (1) a general narrative description of the hydrologic setting of the proposed transmission corridor zone, including a discussion of any water-related special status areas within, or contiguous to, the corridor zone;
- (2) a topographic map, at a scale of 1:24,000 (or another appropriate scale agreed to by staff), showing major water bodies and any identified special status areas within, or contiguous to, the proposed transmission corridor zone. Water-related special status areas may include, but are not limited to, a wild and scenic river; outstanding national resource water; significant natural area, special aquatic site, research natural area, special interest area, and area of critical environmental concern;
- (3) a discussion of potential impacts to water resources within, or contiguous to, the proposed transmission corridor zone, that may occur from the future construction, operation, or maintenance of electric transmission line structures within the corridor zone, including anticipated impacts associated with waste discharges, water runoff, drainage, ground water recharge, erosion patterns and the physical or chemical conditions of existing water bodies;
- (4) a discussion of what measures could be taken to avoid or mitigate any significant adverse impacts to water resources that are identified;
- (5) a discussion of whether any of the water-related special status areas identified could be adversely affected by the future construction, operation, or maintenance of electric transmission line structures within the corridor zone and what measures could be taken to avoid or mitigate significant impacts;
- (6) a general narrative description of the topography, major soil types, erosion potential, and agricultural land uses within, or contiguous to, the proposed transmission corridor zone, including a discussion of any special or unique soil areas within, or contiguous to, the corridor zone;
- (7) a topographic map, at a scale of 1:24,000 (or another appropriate scale agreed to by staff), showing major soil types and any identified special or unique soil areas within, or contiguous to, the proposed transmission corridor zone, including, but not limited to, areas designated as prime agricultural soil or soil of statewide importance, areas containing expansive soils or soils subject to hydrocompaction, contaminated soils, and areas underlain by naturally occurring asbestos;
- (8) a discussion of potential impacts to soil resources within, or contiguous to, the proposed transmission corridor zone, that may occur from the future construction, operation, or maintenance of electric transmission line structures within the transmission corridor zone, including anticipated impacts on soil loss from wind or water erosion, impacts to existing agricultural practices, and potential changes to the soil-vegetation system;

(9) a discussion of what measures could be taken to avoid or mitigate any adverse impacts to soil resources that are identified;

(10) a discussion of whether any of the special or unique soil areas identified could be adversely affected by the future construction, operation, or maintenance of electric transmission line structures within the corridor zone and what measures could be taken to avoid or mitigate significant impacts; and

(11) all assumptions, evidence, references, and calculations used to support the descriptions, discussions, and analyses required in this section.

#### **(g) Waste Management**

In a section entitled, "Waste Management," the application shall include:

(1) a discussion of any contaminated soil or contaminated water within, or contiguous to, the transmission corridor zone that could adversely affect the environment or public health and safety due to the future construction, operation or maintenance of electric transmission line structures within the proposed transmission corridor zone and what measures could be taken to avoid or mitigate significant impacts;

(2) a Phase I Environmental Site Assessment (ESA) for the proposed transmission corridor using methods prescribed by the American Society of Testing and Materials (ASTM) document entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (Designation: E 1527-05); or an equivalent method agreed upon by the applicant and the staff that provides similar documentation of the potential level and extent of site contamination; and

(3) all assumptions, evidence, references, and calculations used to support the descriptions, discussions, and analyses required in this section.

#### **(h) Biological Resources**

In a section entitled, "Biological Resources," the application shall describe the biological resource setting of the proposed transmission line corridor zone and include all of the following:

(1) a discussion and map of sensitive biological resource areas including, but not limited to, wetlands and riparian habitat, areas covered by a Habitat Conservation Plan, Natural Communities Conservation Plan, or similar regional or local habitat protection program, and any area designated as a wildlife refuge or any other special designation;

(2) a list of sensitive species and their habitat known to occur or likely to occur within the proposed corridor zone and within 1 mile of the transmission corridor zone plotted on maps at a scale of 1:24,000 (or another appropriate scale agreed to by staff) or aerial photographs of an appropriate scale;

(3) a discussion of potentially significant biological resource impacts that are reasonably foreseeable from future construction, operation, or maintenance of electric transmission line structures within the corridor zone and mitigation measures to minimize or avoid potentially significant impacts;



- (4) a list of biological resource-related state and federal permits that are likely to be required for the transmission corridor and the state and federal laws that are applicable to each permit; and
- (5) a list of all who prepared the Biological Resources section and their qualifications.

#### **(i) Cultural Resources**

In a section entitled, "Cultural Resources," the application shall describe the cultural resources setting of the proposed transmission corridor zone and include all of the following:

- (1) a discussion of cultural resource information regarding the proposed transmission corridor provided by the California Historical Resources Information System, which is maintained by the California Department of Parks and Recreation, Office of Historic Preservation, through contracts with independent regional Information Centers\*,
- (2) topographic maps at a scale of 1:24,000 showing the proposed corridor zone, areas already surveyed for cultural resources, and locations of known cultural resources\*,
- (3) a discussion of sacred lands data base information provided by the Native American Heritage Commission\*;
- (4) a discussion of contacts made with Native Americans identified by the Native American Heritage Commission and information about locations of archaeological and sacred sites\*;
- (5) a discussion of known and reasonably foreseeable cultural resource impacts that could be adversely affected from the future construction, operation, or maintenance of electric transmission line structures within the corridor zone and measures that could be taken to mitigate any adverse impacts; and
- (6) a list all who prepared the Cultural Resources section and their qualifications. (Include information indicating that they meet the Secretary of the Interior's Professional Qualifications Standards as referenced in the Code of Federal Regulations, Part 61, section 61.3.)

\* Any submittal that contains information about the locations of archaeological sites must be submitted under confidential cover and only a Cultural Resources Specialist is authorized to review confidential cultural resources submittals.

#### **(j) Land Use**

In a section entitled, "Land Use," the application shall include:

- (1) a general description of existing and future land uses adopted by any federal, state, regional, and local planning agency/authority within the proposed transmission corridor zone;
- (2) a map, at a scale of 1:24,000 (or another appropriate scale agreed to by staff), showing existing and future land uses and any identified special status areas within, or contiguous to, the proposed transmission corridor zone;
- (3) the identification of special status areas, if any, within the proposed corridor zone and within one mile of the outer boundaries of the proposed corridor; special status areas include, but are not limited to, areas designated by the California Coastal Commission, San Francisco Bay

Conservation and Development Commission, and Delta Protection Commission; farmland designated as prime, of statewide importance, or unique by the California Department of Conservation; Federal, State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, and historic preservation; mineral resource lands; Native American lands; military lands, and airports;

(4) a discussion of whether any of the special status areas identified could be adversely affected by the future construction, operation, or maintenance of electric transmission line structures within the proposed transmission corridor zone and what measures could be taken to avoid or mitigate significant impacts.

(5) a discussion of the potential impacts to present and foreseeable land uses within, or contiguous to, the proposed corridor zone, that may occur from the future construction, operation, or maintenance of electric transmission line structures within the corridor zone; such discussion should include anticipated impacts on residential, recreational, scenic, agricultural, natural resource protection, educational, religious, cultural, and historic areas, military and airport operations, special status areas, and any other area of unique land uses;

(6) a discussion of what measures could be taken to avoid or mitigate potentially significant adverse impacts;

(7) a discussion of any city- or county-designated transmission corridors located anywhere within the local jurisdiction that would be traversed by the proposed corridor;

(8) a discussion of any designated transmission corridors on state or federally managed lands within all counties affected by the corridor;

(9) a discussion of any local, state, or federal laws, ordinances, regulations, or standards that promote or discourage electric transmission lines in specific areas of the affected jurisdictions or that place restrictions on any electric transmission lines to be built within the proposed corridor;

(10) a discussion of any plan changes (e.g., city/county general plan, State Park general plan, National Forest plan, etc.) being considered by affected local, state, and federal jurisdictions that may present an obstacle to the proposed transmission corridor;

(11) on a map at a scale of 1:24,000 (or another appropriate map scale agreed to by staff), identification of any local, state, or federal designated transmission corridors discussed above, and any city sphere-of-influence boundaries; and

(12) all assumptions, evidence, and references used to support the descriptions, discussions, and analyses required in this section.

#### **(k) Traffic and Transportation**

In a section entitled, "Traffic and Transportation," the application shall include:

(1) a general description of the regional transportation setting of the proposed transmission corridor zone, including all existing and planned state highways and freeways within the proposed corridor zone and within 0.5 miles of the outer boundaries of the corridor;

- (2) identification of any airport within 20,000 feet of a proposed transmission corridor, and any heliport within 5,000 feet of a proposed corridor (or planned or proposed airport runway or an airport runway under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration);
- (3) identification of any designated airport safety zone, airport influence area, or airport referral area within or contiguous to the proposed transmission corridor;
- (4) identification of any restricted military airspace within or contiguous to the proposed transmission corridor;
- (5) a discussion of how the future construction, operation, or maintenance of electric transmission line structures within the proposed corridor zone would affect what is identified above in subsections (1) through (4);
- (6) a discussion of what measures could be taken to avoid or mitigate potentially significant adverse impacts from the future construction, operation, or maintenance of electric transmission line structures within the proposed corridor;
- (7) all assumptions, evidence, and references used to support the descriptions, discussions, and analyses required in this section; and
- (8) a map, at a scale of 1:24,000 (or another appropriate scale agreed to by staff), showing the transportation facilities identified above.

## **(I) Visual Resources**

In a section entitled, "Visual Resources," the application shall include:

- (1) a general narrative description of the regional visual setting of the proposed transmission corridor zone, including the visual properties of the topography, vegetation, and any modifications to the landscape as a result of human activities;
- (2) a discussion of special status areas, if any, within or visible from the proposed corridor zone that could be adversely affected by the future construction, operation, or maintenance of electric transmission line structures within the corridor zone; special status areas include, but are not limited to, areas designated by the California Coastal Commission; state, regional, county and city parks; wilderness, scenic or natural reserves; scenic vistas or scenic resource areas; State Scenic Highways; National Scenic Byways; and All-American Roads;
- (3) a discussion of whether any of the special status areas identified could be adversely affected by the future construction, operation, or maintenance of electric transmission line structures within the proposed transmission corridor zone, and what measures could be taken to avoid or mitigate significant impacts;
- (4) a topographic map, at a scale of 1:24,000 (or another appropriate scale agreed to by staff), showing the special status areas within or contiguous to, the proposed transmission corridor zone;
- (5) a discussion of the potential visual impacts that may occur from the future construction, operation, or maintenance of electric transmission line structures within the corridor zone. The

discussion should include anticipated impacts on visually sensitive areas, including, but not limited to, residential, recreational, coastal, and scenic areas, travelers on scenic roadways, and special status areas. The discussion shall also indicate what measures could be taken to avoid or mitigate any potentially significant adverse impacts; and

(6) all assumptions, evidence, and references used to support the descriptions, discussions, and analyses required in this section.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25331, Public Resources Code and Section 15084, Title 14, California Code of Regulations.

## **CHAPTER 7. ADMINISTRATION**

### **Article 2. Disclosure of Commission Records**

#### **§ 2501. Policy.**

The California Legislature has declared that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, and has also recognized that there are sound reasons for protecting privacy. The Commission has adopted these regulations so that members of the public will fully understand and be given the opportunity to exercise their right to inspect and copy Commission records with the least possible delay and expense, and so that legitimate interests in confidentiality will be protected.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 6250 and 6254, Government Code and Sections 25223 and 25321, Public Resources Code.

#### **§ 2502. Scope.**

This Article applies to inspection and copying of all records. It applies to any person making any request to copy or inspect records. It applies to any request by any person for the Commission to keep a record confidential, including, but not limited to, requests pursuant to Section 25321 of the Public Resources Code.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code, and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code.

#### **§ 2503. Construction and Definitions.**

(a) This Article implements the California Public Records Act (Section 6250 et seq. of the Government Code) and shall be construed in a manner consistent with that Act.

(b) For purposes of this Article the definitions in the California Public Records Act, the definitions in Section 1302 of Article 1 of Chapter 3, the definitions in Section 1341 of Article 2 of Chapter 3, and the following definitions shall apply:

(1) "Private third party" means any person other than a federal, state, regional, or local governmental body or a person under contract to such body.

(2) "Confidential record" means a record that has been determined to be confidential pursuant to Section 2505 or 2506 of this Article.

(3) "Applicant" means a private third party requesting that the Commission keep a record confidential pursuant to Section 2505 of this Article.

(4) "Petitioner" means a person seeking to inspect or copy a confidential record pursuant to Section 2506 of this Article.

(5) "Petition" means a request from a petitioner seeking to inspect or copy a confidential record, pursuant to Section 2506 of this Article.

(6) "Fuel Price" means fuel cost divided by fuel use expressed in dollars, for a specific fuel type.

(7) "Masked" means, but is not limited to, customer, business, or cultural data that has been modified to limit the risk of disclosure of confidential information. Methods of data modification may include, but are not limited to, suppression of data, rounding, swapping of values between like respondents, replacement of data with group averages, grouping of categories, and addition of random values.

(8) "Large UDC" means any UDC that has experienced a peak demand of 1000 megawatts or more in the each of the two calendar years preceding the applicable filing date.

(9) "Small UDC" means any UDC not included in the definition of Large UDC.

(10) "Large LDC" means any LDC that has delivered 100 billion cubic feet of natural gas per year in each of the two calendar years preceding the applicable filing date.

(11) "Small LDC" means any LDC not included in the definition of Large LDC

(12) "Survey Response" means the answers to survey questions provided by persons or companies.

(13) "Aggregated" means that data is summed, averaged, or otherwise combined to limit the risk of disclosure of confidential information.

(14) "Freedom of Information Act" is contained at Title 5 United States Code Section 552.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Sections 6250 et seq., Government Code.

## **§ 2504. Inspection and Copying.**

(a) This section applies to all records, except records deemed confidential, which are subject to the provisions of Section 2506.

(b) A request to inspect or copy a record shall be made orally or in writing to the Office of Chief Counsel. The Public Adviser will assist persons in requesting records. A request shall describe the record sought in sufficient detail so that it can be identified and found by a Commission employee.

(c) Time and Place. A request to inspect or copy a readily identifiable and available record shall be satisfied within ten days of receipt of the request unless the need to complete processing or filing of the record, the use of the record by another person or a Commission employee, the volume of requests, the unavailability of Commission employees, or other unusual circumstances renders such a response impracticable, in which case the Commission will notify the person making the request of the need for an extension within ten days of the request. Such extension shall not exceed ten working days. All records except records determined to be confidential pursuant to Section 2505 or Section 2506 shall be made available for inspection and copying Monday through Friday, generally between 8 a.m. and 5 p.m. at the Commission's offices. The Executive Director shall make reasonable efforts to provide facilities for inspection of records, including a desk for notetaking.

(d) Protection of Records.

Records may be inspected or copied only at Commission offices. The Executive Director may designate a particular place for the public to inspect or copy records. He or she may establish procedures for responding in a fair and orderly manner to numerous requests, including, when strictly necessary to prevent disruption of Commission functions, establishing a specific time each day for inspection and copying. He or she may require a Commission employee to be present at the time of inspection or copying, but such employee shall not disturb a person inspecting or copying records. Where necessary, copies of records rather than originals may be provided for inspection.

(e) Computer Records.

Inspection and copying of computer records and other records whose form makes inspection or copying difficult or impracticable shall be in a manner determined by the Executive Director. If providing an exact copy is impracticable, some type of copy shall nevertheless be provided.

(f) Copies.

Except for records determined to be confidential pursuant to Section 2505 or Section 2506, copies and certified copies of all records are available to any person for a fee which shall be paid at the time a request is made. The fee for providing a copy or a certified copy shall be no higher than the actual cost of providing the copy, or the prescribed statutory fee, whichever is less.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Section 6253(a), 6256 and 6257, Government Code.

## **§ 2505. Designation of Confidential Records.**

### **(a) Third Parties.**

(1) Any private third party giving custody or ownership of a record to the Commission shall specify if it is to be designated a confidential record and not publicly disclosed. An application for confidential designation shall:

(A) be on a sheet or sheets separate from, but attached to, the record;

(B) specifically indicate those parts of the record that should be kept confidential;

(C) state the length of time the record should be kept confidential, and justification for the length of time;

(D) cite and discuss the provisions of the Public Records Act or other law that allow the Commission to keep the record confidential. If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of that advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;

(E) state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, the application shall justify why it cannot;

(F) state how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;

(G) contain the following certification executed by the person primarily responsible for preparing the application:

1. "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge," and

2. State whether the applicant is a company, firm, partnership, trust, corporation, or other business entity, or an organization or association, and

3. State that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization, or association.

(H) If the record contains information that the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, the applicant shall address the items in (A) through (F) of this subsection to the greatest extent possible and shall explain the demand or request made by the original party and the reasons expressed by the original party. If the basis of an application for confidential designation is an order or decision of another public agency pursuant to the Public Records Act or the Freedom of Information Act, the application shall include only a copy of the decision or

order and an explanation of its applicability. The Executive Director shall consult with that agency before issuing a determination.

(2) A deficient or incomplete application shall be returned to the applicant with a statement of its defects. The record or records for which confidentiality was requested shall not be disclosed for fourteen days after return of the application to allow a new application to be submitted except as provided in Section 2507(b) of this Article.

(3) Executive Director's Determination.

(A) The Executive Director shall, after consulting with the Chief Counsel, determine if an application for confidential designation should be granted. An application shall be granted if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application. The Executive Director or the Chief Counsel may, within fourteen days after receipt of an application for confidential designation, require the applicant to submit any information that is missing from the application. If the missing information is not submitted within fourteen days of receipt of the request by the Executive Director or Chief Counsel, the Executive Director may deny the application.

(B) An appeal of a decision to deny the application shall be filed within fourteen days of the Executive Director's decision, and the Commission shall issue a decision on the appeal within four weeks of the filing of the appeal.

(C) After an application or appeal has been denied, the information sought to be designated confidential shall not be available for inspection or copying for a period of fourteen days.

(4) Repeated Applications for Confidential Designation. If an applicant is seeking a confidential designation for information that is substantially similar to information that was previously deemed confidential by the Commission, the new application need only contain a certification, pursuant to Section 2505(a)(1)(G) of this Article. That certification shall state that the information submitted is substantially similar to the previously submitted information and that all the facts and circumstances remain unchanged. An application meeting this criteria will be approved.

(5) Automatic Designation. Information submitted by a private third party shall be designated confidential without an application for confidentiality if the requirements of subsections (a)(5)(A) and (B) of this Section are met. Failure to meet these requirements shall result in the Executive Director returning the submittal to the entity.

(A) The entity submitting the information shall label each individual item of the submittal that is entitled to be designated confidential.

(B) The entity submitting the information shall attest under penalty of perjury, that the information submitted has not been previously released and that it falls within one of the following categories:

1. Information that is derived from energy consumption metering, energy load metering research projects, or energy surveys provided by utilities, natural gas retailers, or electric



service providers under Section 1343 or 1344 of Article 2 of Chapter 3, and that is one or more of the following:

a. for the residential customer sector and the commercial customer sector - customer identifiers, energy consumption, and any other information that could allow a third party to uniquely identify a specific respondent;

b. industrial major customer sector - all information;

c. survey design information - all information used to design a survey, stratify billing records, devise a sample scheme, select a sample, sample specific end-users for participation in a survey or a pre-test of a questionnaire or interview form.

2. Energy sales data provided by utilities, natural gas retailers, or electric service providers, under Section 1306 or 1307 of Article 1 of Chapter 3, if the data is at the greatest level of disaggregation required therein.

3. Average commodity energy price data provided by utilities, natural gas retailers, or electric service providers, under Section 1306 or 1307 of Article 1 of Chapter 3, if the data is at the greatest level of disaggregation required therein.

4. Fuel cost data provided for individual electric generators under Section 1304 of Article 1 of Chapter 3.

5. Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

6. Electric power plant-specific hourly generation data.

7. Electric power plant name, nameplate capacity, voltage at which the power plant is interconnected with a UDC system or transmission grid, address where the power plant is physically located, power plant owner's full legal name and address or longitude and latitude, if power plant is privately owned and its identity as a power plant is not public knowledge, (e.g., backup generator or solar installation at residence or business) under Section 1304 of Article 1 of Chapter 3.

(6) Failure to request confidentiality at the time a record is submitted to the Commission does not waive the right to request confidentiality later; however, once a record has been released to the public, the record can no longer be deemed confidential. Although a record designated as confidential shall remain confidential during the application and appeal process, subject to the provisions of Section 2507(b) of this Article, the application itself is a public document and can be released.

(b) Other Public Entities. When another state or local agency possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, or the Freedom of Information Act, the Commission, the Executive Director, or the Chief Counsel may request and the agency submit the information to the Commission without an application for confidential designation. The Commission shall designate this information confidential.

(c) Commission Generated Information

(1) The Executive Director in consultation with the Chief Counsel, may designate information generated by Commission staff as confidential under the Public Records Act. A confidential designation made in this manner shall be summarized in the agenda for the next Commission Business Meeting. Any private third party or public entity may request to inspect or copy these confidential records by filing a petition pursuant to Section 2506 of this Article.

(2) Contracts and Proposals

(A) Information received by the Commission in response to a solicitation shall be kept confidential by the Commission and its evaluators before posting of the notice of the proposed award. The solicitation document shall specify what confidential information the proposal may contain and how that confidential information will be handled after the posting of the notice of the proposed award.

(B) The Executive Director, in consultation with the Chief Counsel, may designate certain information submitted under a contract as confidential in accordance with the Public Records Act or other provisions of law. The designation and its basis shall be in writing and contained in the contract governing the submittal of the information or in a separate statement. The contract or written statement shall also state exactly what information shall be designated confidential, how long it shall remain confidential, the procedures for handling the information, and all other matters pertinent to the confidential designation of the information.

(3) All data generated by the Commission that is the same type as the data described in Section 2505(a)(5)(B) of this Article shall be kept confidential by the Commission.

(d) All documents designated confidential pursuant to this Section shall be treated as confidential by the Commission except as provided in Section 2507.

(e) Every three months, the Executive Director shall prepare a list of data designated confidential pursuant to this Section during the previous three months. The Executive Director shall give the list to each Commissioner. The list shall also be made available to the public upon request.

Note: Authority cited: Section 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25321, and 25364, Public Resources Code.

**§ 2506. Petition for Inspection or Copying of Confidential Records.**

(a) Form of Petition. A petition for inspection or copying of any confidential record shall be written, and shall be served on the Chief Counsel. It shall state the facts supporting a conclusion that the Commission should disclose the confidential record.

(b) Delegation of Commission Decision to the Chief Counsel.

(1) The decision of the Commission on a petition for inspection or copying of confidential records is delegated to the Chief Counsel.

(2) If the petition is for inspection or copying of a record received from a private third party, a person under contract to the Commission, or another government agency, the Chief Counsel shall, within one day of service of the petition, provide both a copy of the petition to the

person or entity that submitted the information and a written request for written approval of release of the record. Any party not wishing to give permission for the record's release may supplement the initial application for confidential designation, if any, or provide any additional information within five working days of the receipt of the request for permission. Failure to respond to the Chief Counsel's request to release the record shall not be deemed consent for release.

(3) The Chief Counsel shall issue a decision on the petition within ten days of its service on the Chief Counsel, unless unusual circumstances renders such a decision impossible, in which case the Commission will notify the petitioner of the need for an extension within ten days of the filing of the petition. Such extension shall not exceed ten working days. Any party may request that the full Commission reconsider the Chief Counsel's decision. Any such request shall be filed within fourteen days of the issuance of the Chief Counsel's decision, and shall be decided by the Commission within four weeks of the filing of the request.

(4) A decision that a record should be disclosed shall ordinarily be effective fourteen days after issuance, although an earlier effective date may be specified in unusual circumstances, consistent with maintaining the opportunity of the person originally submitting the information to prevent its release by requesting reconsideration or appealing the decision to a court of competent jurisdiction. A decision that the record is exempt from disclosure shall be effective immediately.

(c) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the Commission orders held confidential pursuant to this section. Any petition for to inspect or copy such information shall be deemed denied unless the petitioner alleges changed circumstances which require a reversal of the Commission's previous order. A petition for such information shall be returned to the petitioner with a copy of the Commission's previous order, a copy of these regulations, and an explanation of the requirement to show changed circumstances. An amended petition may be submitted.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code; and Sections 6250 et seq., Government Code.

#### **§ 2507. Disclosure of Confidential Records.**

(a) No confidential record shall be disclosed except as provided by this Section or Section 2506, unless disclosure is ordered by a court of competent jurisdiction.

(b) No record that is the subject of a pending application or appeal shall be disclosed except as provided by this Section or Section 2506 and any request to copy or inspect a document that is the subject of a pending application shall be subject to the requirements of Section 2506.

(c) The Executive Director may disclose records determined confidential pursuant to Section 2505 or Section 2506 to:

(1) Commission employees whose Commission work requires inspection of the records;

(2) Persons under contract to the Commission whose work for the Commission requires inspection of the records and who agree in a contract to keep the records confidential; and

(3) Other governmental bodies and state-created private entities, such as the California Independent System Operator, that need the records to perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees or contractors whose agency work requires inspection of the records.

(4) Data collected in association with customer surveys of the type described in Section 1343 of Article 2 of Chapter 3 and that are not masked or aggregated may be disclosed to the following entities:

(A) Demand side management program administrators, funded through the Energy Efficiency Public Goods Charge (EEPGC) established in Public Utilities Code Section 381(c), which need the survey responses to perform their official functions and that agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need that data for EEGC program evaluation and planning.

(B) Utilities that opt into collaborative surveys funded by the Commission, or that contribute funds for the implementation of a survey coordinated by the Commission, pursuant to Section 1343(e) of Article 2 of Chapter 3, may have access to that portion of survey responses by customers included within their service area provided they agree to keep the records confidential and to disclose the records only to those employees, and contractors, who need the data for distribution system planning.

(d) The Executive Director may release records designated as confidential if the information has been masked or aggregated to the point necessary to protect confidentiality. Information described in paragraphs (1)-(4) of this subsection is deemed masked or aggregated to the point necessary to protect confidentiality.

(1) Data provided pursuant to Sections 1306(a)(1) or 1307(a)(1) of Article 1 of Chapter 3 may be disclosed at the following levels of aggregation or higher:

(A) For individual gas retailers or electric service providers, data aggregated at the statewide level by major customer sector;

(B) For the sum of all natural gas retailers or electric service providers, (1) data aggregated at the county level by residential and non-residential groups and (2) data aggregated at the service area, planning area, or statewide levels by major customer sector;

(C) For small UDCs and small LDCs, data aggregated at the service area, planning area, or statewide level by customer sector;

(D) For large UDCs and large LDCs, (1) data aggregated at the county level by residential and non-residential groups and (2) data aggregated at the service area, planning area, or statewide level by customer sector;

(E) For the total sales of the sum of all electric retailers, or the total sales of the sum of all natural gas retailers, data aggregated at the county level by the economic industry groupings

used by the California Employment Development Department in its June 2000 Current Employment Statistics survey county reports.

(F) For total consumption by end users (total sales by retailers plus energy generated or produced onsite) data aggregated at the county level by the economic industry groupings used by the California Employment Development Department in its June 2000 Current Employment Statistics survey county reports.

(2) Commodity energy price data provided pursuant to Sections 1306(a)(2) or 1307(a)(2) of Article 1 of Chapter 3 may be disclosed by major customer sector at the following levels of aggregation or higher:

- (A) the sum of all non-utility retailers;
- (B) the sum of utility retailers; and
- (C) the sum of all retailers.

(3) Electric generator fuel cost data provided pursuant to Section 1304(a)(2)(C) and electric generator fuel price data computed from fuel cost and fuel use data reported pursuant to Section 1304(a)(2)(C), may be disclosed if aggregated by fuel type and gas service area or higher, and if the disclosure is made six months after the end of the month for which prices were reported.

(4) Data of the type described in Section 1343 of Chapter 3, Article 2 and collected in association with customer surveys that are begun after December 8, 2000, of this subsection (4) may be disclosed in the following manner:

(A) Residential customer sector and commercial customer sector survey responses from persons or companies may be released after name, address, and other respondent identifiers have been removed, and usage data and responses to specific survey questions that could allow a third party to uniquely identify a respondent have been masked;

(B) Industrial major customer sector responses from companies may not be released. Tabulations of industrial major customer sector survey data may be released only after the data has been aggregated to ensure that information about respondents will not be disclosed.

(e) The Executive Director may release records previously designated as confidential in either of the following circumstances:

(1) upon written permission by all entities who have the right to maintain the information as confidential; or

(2) under any other circumstance where the information is no longer entitled to confidential treatment. In this case, the Executive Director shall provide notice of the Commission's intent to release the information to the entity who originally submitted the information. An appeal of the decision to release the information may be filed with the Commission within fourteen days of this notice. The Commission shall issue a decision on this appeal within four weeks of its filing.

(f) The Executive Director shall consult with the private third party to whom the confidential designation applies about disclosure under subsections (c) and (d) of this Section.

Note: Authority cited: Section 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

#### **§ 2509. Security of Confidential Records.**

The Executive Director is responsible for maintaining the security of confidential records and records determined by the Commission to be unavailable pursuant to Sections 2505 and 2506.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

#### **§ 2510. Delegation of Authority and Responsibilities.**

The Executive Director may delegate any of his or her authorities or responsibilities under this Article to any Division Chief.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

### **Article 3. Role of Public Adviser**

#### **§ 2551. Application of Article.**

This article defines the duties of the public adviser to the State Energy Resources Conservation and Development Commission, which duties are outlined in sections 25222 and 25519 of the Public Resources Code, and any amendments to Division 15 of the Public Resources Code.

Note: Authority cited: Sections 25213, 25218(e) and 25218(f), Public Resources Code. Reference: Sections 25217-25217.5, 25222, 25223 and 25519(g), Public Resources Code.

#### **§ 2552. Definitions.**

(a) "Member of the public" means any person, firm, association, organization, partnership, business trust, corporation, or company, and also includes any city, county, public district or agency, state or any department or agency thereof (except for the commission and members of its staff), and the United States or any department or agency thereof.

(b) "Proceeding" means any meeting, hearing, workshop, conference, or visit, of the commission or its staff, at which public attendance is required or permitted.

#### **§ 2553. Overall Duty of the Public Adviser.**

The public adviser serves as adviser to the public and to the commission to ensure that full and adequate participation by members of the public is secured in the commission's proceedings. The adviser serves the public and the commission by (1) advising the public how

to participate fully in the commission's proceedings, thereby providing the commission with the most comprehensive record feasible in those proceedings; (2) advising the commission on the measures it should employ to assure open consideration and public participation in its proceedings; and (3) taking other measures to comply with sections 25222 and 25519(g) of the Public Resources Code.

**§ 2554. The Adviser's Duty to Refrain from Advocating Substantive Positions.**

In performing duties to the commission, including those duties discharged by advising the public, the adviser shall not represent any members of the public, nor shall he advocate any substantive position on issues before the commission.

**§ 2555. The Adviser's Duty Within the Commission.**

(a) Within the commission the adviser shall present recommendations to and requests for documents from line divisions of the commission only through the executive director or the division chiefs. The public adviser shall be given full and ready access to all public records.

(b) In recommending to the commission measures to assure full public participation in the commission's proceedings, the adviser shall render his or her independent advice on commission procedures that in the adviser's view will provide the optimum of public participation to benefit the commission in its work. As part of such advice, the adviser may advocate points of procedure that in the adviser's view will improve public participation in the commission's proceedings.

(c) So that the adviser may ensure that timely and complete notice of commission proceedings is disseminated to members of the public, he or she shall examine all notices of commission proceedings and shall present to the executive director any recommendations for improving the accuracy and timeliness of such notices.

**§ 2556. The Adviser's Duties in Advising Members of the Public.**

The adviser shall be available to any member of the public with an interest in participating in the commission's proceedings. In advising members of the public on effective means of participating in the commission's proceedings, the adviser shall render his or her independent advice to a member of the public that in the adviser's view will provide the most effective participation of that member. Specifically, the adviser shall:

(a) Respond to all inquiries he or she receives from members of the public for information on the commission's agenda and opportunity for participation in the commission's proceedings.

(b) Respond to all inquiries from members of the public seeking advice on how to participate in the commission's proceedings.

(c) Establish rosters of members of the public who have an interest in the commission's proceedings.

(d) Advise members of the public regarding when an attorney, expert witness, or other professional assistance will be necessary or helpful to their participation.

(e) Upon request, assist members of the public in obtaining access to the public records of the commission, following the procedures established by appropriate regulations.

(f) Refer members of the public to commission staff who can best respond to the inquiries of those members.

(g) Organize the appearances of public participants in the public meetings and hearings of the commission, and formally introduce public participants to the commission.

(h) Suggest consolidation and coordination between and among members of the public with similar interests or views.

(i) Solicit the participation of members of the public whose participation the adviser deems necessary or desirable to complete the record in matters before the commission.

(j) Upon the request of public participants who may be absent from the commission's place of business or proceedings when a matter of interest to them is being considered, neutrally and publicly relate those participants' points to the commission.

(k) When necessary and desirable, guide public participants in their oral presentation to elicit or emphasize the participants' main points.

**§ 2557. Additional Duties.**

The adviser shall perform such additional duties consistent with Division 15 of the Public Resources Code and these regulations, that the commission may from time to time assign.